Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-6561

C. M. BRADFORD, ROBERT E. ROUDEBUSH, KENNETH BARTLETT, J. O. HEFLIN, O. D. RILEY, MARVIN WILLIAMS, L. H. CHRISTIAN, LELAND CRABB, EMORY HAYES and HARLAN ROLLINS, d/b/a HAYES and ROLLINS, W. J. KEITH, MAX LONGLEY, EDD PUTNAM, T. J. SIMS, and WILLIAM D. STEWART, JR., *Petitioners*

v.

PLAINS COTTON COOPERATIVE ASSOCIATION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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No.

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v.

PLAINS COTTON COOPERATIVE ASSOCIATION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above case.

I. OPINIONS BELOW

The opinion of the United States District Court for the Western District of Oklahoma has not been re-

ported, but is printed in Appendix B, beginning at page 15a.

The opinion of the United States Court of Appeals for the Tenth Circuit is reported at 539 F.2d 1249 (10th Cir. 1976), *reh. denied,* and is printed in Appendix C, beginning at page 87a.

II. JURISDICTION

The order of the Court of Appeals for the Tenth Circuit, printed in Appendix C at page 87a, was entered on July 9, 1976. That court's order denying the timely petition for a rehearing, printed in Appendix D at page 101a, was entered on August 11, 1976. The jurisdiction of the Supreme Court is invoked pursuant to 28 U.S.C. §1254(1).

III. QUESTIONS PRESENTED FOR REVIEW

Presented for review are the following questions:

1. Whether the Court of Appeals' gross disregard of the District Court's findings of fact was in contravention with Rule 52(a) of the Federal Rules of Civil Procedure.
2. Whether the petitioners, the growers, and the respondent, Plains Cotton Cooperative Association, failed to contract because Plains failed to seasonably accept the growers' offers to sell their cotton.
3. Whether the growers and Plains failed to contract because Plains, in its acceptance, materially altered the terms of the growers' offers.

IV. STATUTES AND RULE INVOLVED

STATUTES:

12A Okla. Stat. §1-204, UNIFORM COMMERCIAL CODE §1-204:

* * *

(2) What is a reasonable time for taking any action depends on the nature, purpose and circumstances for such action.

(3) An action is taken "seasonably" when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time.

12A Okla. Stat. §2-207, UNIFORM COMMERCIAL CODE §2-207:

(1) A definite and seasonable expression of acceptance or a written confirmation which is sent within a reasonable time operates as an acceptance even though it states terms additional to or different from those offered or agreed upon, unless acceptance is expressly made conditional on assent to the additional or different terms.

(2) The additional terms are to be construed as proposals for addition to the contract. Between merchants such terms become part of the contract unless:

(a) the offer expressly limits acceptance to the terms of the offer;

(b) they materially alter it; or

(c) notification of objection to them has already been given or is given within a reasonable time after notice of them is received.

* * *

12A Okla. Stat. § 2-305(1), UNIFORM COMMERCIAL CODE § 2-305(1):

> The parties if they so intend can conclude a contract for sale even though the price is not settled. In such a case the price is a reasonable price at the time for delivery if
>
> (a) nothing is said as to price; or
>
> (b) the price is left to be agreed by the parties and they fail to agree; or
>
> (c) the price is to be fixed in terms of some agreed market or other standard as set or recorded by a third person or agency and it is not so set or recorded.

RULE:

FEDERAL RULE OF CIVIL PROCEDURE 52(a):

> Findings of facts shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses.

V. STATEMENT OF THE CASE

A. Summary of this Litigation

In the fall of 1973, 19 cotton farmers brought 9 separate actions against the Plains Cotton Cooperative Association ("Plains") seeking to invalidate certain alleged "forward" contracts for sale of the 1973 cotton crop to Plains. The suits were either filed in, or removed to, the United States District Court for the Western District of Oklahoma. The District Court took jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) and venue was proper under 28 U.S.C. § 1391. By agreement of the parties, the 9 cases were consolidated under

Rule 42(a) of the Federal Rules of Civil Procedure for trial and disposition.

After discovery and hearing, and based upon extensive findings of fact, both general with respect to all parties and specific with respect to each individual plaintiff, the trial court found for plaintiffs' and held that the alleged forward contracts were invalid.[1] The district court's unreported General Findings of Fact and Conclusions of Law as to All Actions are reproduced at Appendix B, beginning at page 15a. The district court's Specific Findings of Fact as to each plaintiff are reproduced, beginning at page 28a.

The cases were consolidated for review before the United States Court of Appeals for the Tenth Circuit which exercised jurisdiction pursuant to 28 U.S.C. § 1291. The court of appeals, by order dated July 9, 1976, reversed the judgments of the trial court. *Bradford* v. *Plains Cotton Cooperative Association,* 539 F.2d 1249 (10th Cir. 1976), reproduced at Appendix C beginning at page 87a. Plaintiffs sought a rehearing and their motion was denied on August 11, 1976. Plaintiffs[2] now petition for a writ of certiorari from the United States Supreme Court to review the decision

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[1] The district court entered judgment of $521,000 plus interest which represented the difference between the market price at time of sale and the price specified in the contracts held to be invalid.

[2] These statements of facts relate to the basic conflict between each of the individual plaintiff growers and Plains. The growers did not act in concert preceeding the filing of these actions and minor variations in the facts relating to each individual case exist. For the purpose of simplicity and in light of the fact that the court of appeals dealt with the cases as a unit, the growers do the same for the purpose of this petition. However, plaintiffs Holden, Smith, Gelnar, Patten, and Davis have not joined in this petition.

of the Tenth Circuit Court of Appeals. Jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

B. Statement of Facts

Petitioners hereinafter referred to collectively as "growers" are farmers who raise cotton in Oklahoma. Respondent Plains is a cotton marketing cooperative owned by approximately 20,000 farmers in Texas and western Oklahoma. In late 1972 and early 1973 Plains undertook an aggressive cotton contracting program by contacting numerous gin managers in southwestern Oklahoma authorizing them to act as Plains' agents for the purpose of contracting with cotton growers for cotton to be harvested in the fall of 1973 and spring 1974. Such contracts are known as "forward contracts," and are agreements by which a grower agrees to sell cotton grown on designated acreage during a certain crop year for delivery to the purchaser after harvest. Each of the petitioners herein purportedly entered into a separate forward contract with Plains. The manner in which such alleged contracts came into existence as determined by the district court is set forth below. These factual findings, of course, are binding upon the court of appeals unless "clearly erroneous". Rule 52(a) of the Federal Rules of Civil Procedure.

Each individual grower negotiated the alleged forward contract with Plains through Plains' agents, the gin managers. When each of the growers presented himself to the gin manager for such purpose, the manager required the grower to supply certain information concerning his operations and production practices which was requested on a standard written forward contract form supplied by Plains. Plains' agent

informed the grower of the price it was willing to pay for the grower's cotton to be produced in the fall of 1973 and spring of 1974. General Findings of Fact ¶¶5 and 6, Appendix B at 17a-18a. The prices quoted to the individual growers varied greatly and included 925 points (9¼ cents per pound) over government loan[*]; 1000 points (10 cents per pound) over government loan; 1150 points (11½ cents per pound) over government loan; and 2400 points (24 cents per pound) over government loan. Each of the growers believed on the basis of the written contract form and the gin manager's representations that the price quoted to him by the gin manager was Plains' price for all grades and classifications of cotton made by the government in fixing its loan value. General Findings of Fact ¶7, Appendix B at 18a.

After the forward contract forms had been completed by the gin manager, the growers' signatures affixed thereto, and the growers informed of the prices Plains would pay for the cotton, the contract forms were mailed to Plains at Lubbock, Texas for approval. The offers for forward contracts were not binding on Plains until they had been approved by Plains' home office. General Findings of Fact ¶9, Appendix B at 18a-19a. After the contract offers were received at its headquarters, Plains unreasonably delayed in returning the approved forward contract forms to the gin managers. *Ibid.* During this period of delay, the price of cotton was steadily rising.

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[*] The Commodity Credit Corporation loans qualified cotton growers monies to help defray harvesting costs. The amounts so loaned depend on the grade, staple, and micronaire of the cotton. The amounts available for each such gradient are published annually.

When Plains received and reviewed the growers' offers for forward contracts, it substantially and materially altered such offers in two ways before returning them to the gin managers for subsequent transmittal to the growers. First, Plains attached a schedule to each of the contract forms providing for fluctuating prices depending on the quality of the cotton. As found by the district court, the growers were never advised that such schedules would be attached to the contract forms nor that the prices that they would receive for their cotton would be predicated on such schedules. To the contrary, they were told by the gin managers that the prices they would receive were the flat prices quoted to each of them above the government loan—i.e. 9¼ cents, 10 cents, 11½ cents, and 24 cents above government loan. General Findings of Fact ¶ 10, Appendix B at 19a.

Second, Plains altered thirteen farmers' forward contract forms by changing the "exclusion date." These offers, which the cotton growers signed while in the presence of the gin manager, provided that Plains would be obligated to buy the growers' cotton until March 15, 1974, the "exclusion date." After that date, Plains would not be obligated to purchase the grower's cotton but would have the option of purchasing the cotton. When Plains received the contract offers in Lubbock, Texas, it changed some of the exclusion dates from March 15, to March 1, 1974, and in one instance changed the date from December 31, 1973 to March 1, 1974. The District Court found such changes constituted material alterations to the alleged contracts and new offers on the part of Plains to the growers. General Findings of Fact ¶ 12, Appendix B at 19a-20a.

After the contract forms were so altered, they were returned to the gin managers without instructions to

deliver them to the growers. The growers did not receive copies of the alleged contracts, containing different terms until August or September of 1973—an average of about four months delay for each grower. As soon as each grower came into possession of the altered contract forms, objections were lodged to the alterations.[4] Plains, asserting that legally binding contracts had been formed, refused to submit to arbitration, as requested by some of the growers pursuant to the provision contained in the contract forms. Lacking other recourse, the growers filed suits in state and federal courts (ultimately consolidated in federal courts), seeking a judicial determination that Plains' alleged acceptances of the growers' offers were ineffective.

The district court held for the plaintiffs and found that the growers' offers had not been effectively accepted by Plains. The court found that the gin managers were agents of Plains (General Findings of Fact ¶¶ 1 and 3, Appendix B at 16a-17a), that the growers had offered to sell their cotton to Plains at the stipulated price above government loan (General Findings of Fact ¶ 7, Appendix B at 18a), that Plains had delayed accepting the offers for an unreasonably long period of time (General Findings of Fact ¶ 9, Appendix B at 18a-19a), and that such purported acceptance was ineffective because of the unreasonable delay in communicating such acceptances to the growers. General Findings of Fact ¶ 15, Appendix B at 20a-21a. In addition, the court found that Plains materially altered the terms of the offer when it attached gradient price schedules to its purported acceptances

[4] Suit was filed by one grower three days after receipt of the altered contract.

(General Findings of Fact ¶10, Appendix B at 19a) and when it changed the exclusion date (General Findings of Fact ¶12, Appendix B at 19a-20a).

Because no contract had been executed by the parties, the district court found that the farmers were entitled to the market value of the cotton at the time of delivery to Plains.

Plains appealed the judgment of the district court to the United States Court of Appeals for the Tenth Circuit. The court of appeals, dismissing the district court's findings of fact as to the effect of the delay in Plains' acceptances as meriting "no consideration" and ignoring the issue of the effect of Plains' material alterations in the terms of the offers, reversed the district court and entered judgment for Plains.

C. Petitioners' Contentions on the Merits

The growers' contentions on the merits are:

First, that the growers' offers to forward contract their 1973-74 cotton crop to Plains were not seasonably accepted by Plains pursuant to 12A Okla. Stat. § 2-207 (1), UNIFORM COMMERCIAL CODE § 2-207(1).

Second, that if the growers' offers were accepted, the imposition of altered and additional terms by Plains "materially altered" the contract as provided in Okla. Stat. § 2-207(2). That such material alterations did not become part of the contract because such alterations were never accepted by the growers. Thus, even if the growers were deemed merchants under 12A Okla. Stat. § 2-207(2), UNIFORM COMMERCIAL CODE § 2-207(2), that the exception provided therein for automatic acceptance of additional terms is not operative.

Third, that the district court's findings of fact supported the conclusions set forth above. That those conclusions rest totally on the *facts* determined by the district court. For instance, whether an offer is accepted in a reasonable time under the circumstances is dependent upon all of the *facts* surrounding the transaction in question including the participants therein and the subject matter of the transactions. That the facts found by the district court were arbitrarily and inexplicably set aside, ignored or changed by the court of appeals in a manner inconsistent with the requirements of Rule 52(a) of the Federal Rules of Civil Procedure.

1. *Plains and the Growers Failed to Contract Because Plains Failed to Seasonably Accept The Growers' Offers.*

12A Okla. Stat § 2-207(1), UNIFORM COMMERCIAL CODE § 2-207(1), requires that an acceptance be seasonable. "An action is taken 'seasonably' when it is taken at or within the time agreed or if no time is agreed at or within a reasonable time." 12A Okla. Stat. § 1-204(3), UNIFORM COMMERCIAL CODE § 1-204 (3). The Code defines "a reasonable time" by providing: "What is a reasonable time for taking any action depends on the nature, purpose and circumstances of such action." 12A Okla. Stat. § 1-204(2); UNIFORM COMMERCIAL CODE § 1-204(2).

Determination then of whether Plains accepted the farmers' offers seasonably is essentially a factual question. The district court held:

> . . . the length of time which passed from the date of receipts of the contracts until said contracts were approved by PCCA [Plains] was unreason-

able under the circumstances. General Findings of Fact ¶ 9, Appendix B at 18a-19a.

Furthermore, the district court held that the delay in communication of the acceptances to the farmers was also unreasonably long. General Findings of Fact ¶ 15, Appendix B at 20a-21a. The district court based these findings on its determination that Plains, during a period of time when cotton prices were steadily rising, unnecessarily delayed accepting the contracts and unnecessarily delayed communicating its acceptances to the farmers.

The court of appeals specifically recognized that "[T]he execution of a contract by a grower was an offer to sell on the terms stated", and it also recognized that there was delay in the delivery of the acceptance to the growers. Inexplicably, however, the court of appeals ignored the district courts' finding that such delay was unreasonable under the circumstances, ignored the provisions of the Oklahoma Code § 2-207(1) and § 1-204(2) and ruled "[T]he delay in contract receipt by the grower does not affect the validity of the contract and merits no consideration." 539 F.2d at 1253, Appendix C at 92a.

The elapsed time between the offers and delivery of the executed contracts to the growers ranged from five weeks (Roudebush) to five months (Bradford). If the provision of § 2-207(1) requiring a "seasonable expression of acceptance" is to have any meaning, it must be interpreted to limit the period of time an offeree has to accept an offer. Although the length of this period will vary according to the specific factual setting, an important factor in determining the reasonable time for acceptance must be the possible and foreseeable effects of events subsequent to the offer on the terms of the offer. In the case at bar, where the rise in the price of cotton after the growers' offers favored Plains, Plains should not be able to wait five months before attempting to accept the offers.

No explanation was ever offered for these delays. Based on its findings with respect to the nature, purpose and circumstances of Plains' purported acceptances, the district court properly and correctly determined that Plains had unreasonably delayed its responses to the growers' offers and its responses could not constitute effective acceptances.

2. *Plains and The Growers Failed to Contract Because Plains, in Its Acceptance, Materially Altered The Terms of The Growers' Offers.*

Plains materially altered the growers' contract offers in two respects. Plains, in its acceptances, altered the purchase price by substituting a gradient schedule which listed the stipulated purchase price as the top price for the best cotton. As a result, instead of agreeing to pay the farmers a set price above government loan, Plains proposed that the purchase price be determined by its own gradient scale. The district court concluded that the changes proposed by Plains in the purchase price constituted a material alteration. *See,* General Findings of Fact ¶ 10, Appendix B at page 19a.

Plains, after receiving some of the offers, unilaterally altered the exclusion date—the date after which Plains had the right to refuse delivery of any cotton. If the price of cotton increased after that date, Plains could elect to take all the cotton harvested. If the price dropped after that date, Plains could elect to refuse such cotton. Properly fixing the exclusion date

therefore was crucial to the rights and obligations of the parties to these purported forward contracts. Because of the importance of the exclusion date, the district court concluded that the changes in that date constituted a material alteration of growers' offers. General Findings of Fact ¶ 12, Appendix B at 19a-20a.

An acceptance is effective under 12A Okla. Statute § 2-207(1), UNIFORM COMMERCIAL CODE § 2-207(1), only if additional or different terms contained in such acceptance are not material to the contract. *See, Roto-Lith, Ltd.* v. *F.P. Bartlett & Co.*, 297 F.2d 497 (1st Cir. 1962). If material alterations are proposed *which are detrimental only to the offeror*, then effective acceptance of the offer has not been made. Otherwise, an offeror can find himself bound to terms greatly different than proposed. Any other result would mean that, in a situation like the one at bar, a contract vastly different from the one proposed would be imposed on the offerors.

Assuming, *arguendo*, that the *Roto-Lith* construction of § 2-207 is rejected, at best the material alterations become proposals for additions to the contract under § 2-207(2).[5] Official Comment 3 to § 2-207 provides:

> Whether or not additional or different terms will become part of the agreement depends upon the provisions of subsection (2). If they are such as materially to alter the original bargain, they will not be included unless expressly agreed to by the other party. UNIFORM COMMERCIAL CODE § 2-207, Comment 3.

[5] For purposes of this case, it matters not whether the farmers are found to be merchants or nonmerchants. Section 2-207(2) provides that if one of the parties is a nonmerchant, the additional terms proposed by the offeree only become proposals for addition to the contract requiring acceptance. If both parties are merchants, the additional terms proposed by the offeree become part of the contract unless they constitute material alterations, as so found by the district court. *See* General Findings of Fact ¶¶ 10 and 12, Appendix B at 19a, 20a. Thus, whether the farmers are held to be merchants or nonmerchants, under the facts in the case at bar, Plains' alterations in the contract offers were additional proposals to the alleged contracts which were timely rejected by the growers and never effective.

The growers never agreed to Plains' alteration of the terms of the offer, and expressed their objections immediately by direct communications to Plains and by filing suit. The court of appeals recognized that the material alterations were proposals for additions to the contract and that the growers did not agree with them. 539 F.2d at 1253, Appendix C at 93a. The court erred, however, in proceeding from that point.

If there was no agreement as to price, the Code will impose a price. Under the interpretation given § 2-207 by UNIFORM COMMERCIAL CODE § 2-207, Comment 6, a sales contract consists of the terms to which the parties have agreed and the terms supplied by Article Two as to those provisions to which parties have been unable to agree. One of Article Two's innovations is to allow the parties to conclude a contract for sale even though the price is not settled. 12A Okla. Stat. § 2-305(1); UCC § 2-305(1). If the parties failed to agree upon a price, § 2-305(1) provides:

> In such a case the price is a reasonable price at the time of delivery. 12A Okla. Stat. § 2-305(1)(b), UNIFORM COMMERCIAL CODE § 2-305(1)(b).

Thus, if a contract was formed by Plains' acceptances without agreement as to the purchase price, § 2-305(1) dictates that the purchase price be the price of cotton of similar grade and quality at the time of delivery. This is the market price at the time of delivery—the

price used by the district court in computing the amount of the judgment entered.

3. *The Court of Appeals' Gross Disregard of the Findings of Fact of the District Court Contravenes the "Clearly Erroneous" Requirement of Rule 52(a) of The Federal Rules of Civil Procedure.*

The standard for review by the court of appeals of the district court's findings of fact is enunciated in Rule 52(a) of the Federal Rules of Civil Procedure:

> Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. FED. R. CIV. P. 52(a).

Instead of applying the standards set forth in Rule 52(a), the court of appeals set aside or ignored the district court's finding of fact. Part VI A of this petition, *infra* at 16 explains in detail why the court of appeals' dismissal of the district court's findings and substitution of its own was improper and why the Supreme Court should exercise its discretionary powers to review the court of appeals' decision.

VI. REASONS FOR GRANTING THE WRIT OF CERTIORARI

A. The Court of Appeals' Gross Disregard For the Findings of Fact of the District Court So Far Departs From the Accepted and Usual Course of Judicial Proceedings As to Call For an Exercise of the Supreme Court's Power of Supervision.

The findings of fact by the district court upheld the basic allegations asserted by the growers. These facts sharply disputed by the parties were set aside or disregarded by the court of appeals. The district court based its findings upon the evidence produced by the

parties. Because a trial court is in a superior position to determine the relevant facts, and because a need for judicial economy requires elimination of duplicative functions, a strong federal policy has emerged to limit the scope of appellate review of a trial court's findings of fact. Rule 52(a) of the Federal Rules of Civil Procedure provides the applicable standard of review for a court of appeals:

> Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witness. FED. R. CIV. P. 52(a).

In *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100 (1969), this Court, interpreting the standards for review of a trial court's findings of fact, held:

> In applying the clearly erroneous standard to the findings of a district court sitting without a jury appellate courts must constantly have in mind that their function is not to decide factual issues *de novo*. The authority of an appellate court, when reviewing the findings of a judge as well as those of a jury, is circumscribed by the deference it must give to decisions of the trier of the fact, who is usually in a superior position to appraise and weigh the evidence. The question for the appellate court under Rule 52(a) is not whether it would have made the findings the trial court did, but whether "on the entire evidence [it] is left with the definite and firm conviction that a mistake has been committed." 395 U.S. at 123. *Accord, Graver Tank & Manufacturing Co.* v. *Linde Air Products Co.*, 336 U.S. 271 (1949).

In *Zenith Radio Corp.*, the court of appeals reversed the district court's findings of fact because the court of

appeals believed that too much weight had been given to particular testimony. This Court reversed because the Court of Appeals gave ". . . insufficient deference to the findings of the trial judge . . ." 395 U.S. at 122.

The court of appeals in the instant case gave no deference to the decisions of the trier of fact, the district court. This is clearly illustrated by the following statement from the court of appeals decision: "The conduct of the parties establishes mutuality of assent to the contracts." 539 F.2d at 1253, Appendix C at 93a. Evaluation of the conduct of the parties and what the totality of conduct evinces is a primary responsibility of the trier of fact. The district court found with respect to that conduct that:

- Plains recruited agents to expand its forward contracting operations in Southwestern Oklahoma. General Findings of Fact ¶ 1, Appendix B at 16a.
- That Plains' agents told the growers that they would be paid a fixed price for their cotton. General Findings of Fact ¶ 7, Appendix B at 18a.
- That the offer therefore made by the growers could be accepted only by Plains at its headquarters in Lubbock, Texas. General Findings of Fact ¶ 9, Appendix B at 18a-19a.
- That Plains delayed in accepting the offers after receipt. General Findings of Fact ¶ 9, Appendix at 18a-19a.
- That Plains altered the price and exclusion date when accepting. General Findings of Fact ¶¶ 10 and 12, Appendix B at 19a-20a.
- That Plains through its agents delayed for up to 5 months in communicating acceptance to the growers. General Findings of Fact ¶ 15, Appendix B at 20a-21a.

- That immediately upon communication of the acceptances with the alterations, the growers unequivocally communicated their non-acceptance of the alterations to Plains. General Findings of Fact ¶ 15, Appendix B at 20a-21a.

From these facts the trial court concluded that a contract had not been consummated because the delay in acceptance was unreasonable and the alterations contained in the purported acceptance were so material as to vitiate any purported acceptance.

The court of appeals could not have predicated its conclusion that "the conduct of the parties establishes mutuality of assent to the contracts" on the basis of the facts found by the trial court. Rather, it apparently reached that conclusion by setting aside or disregarding those facts and by determining other facts *de novo*.

For instance, the court simply disregarded the district courts' findings concerning the agency of the gin managers (539 F.2d at 1252, Appendix C at 91a), and the delay in communicating acceptance to the growers (539 F.2d at 1253, Appendix C at 92a). In addition, the court of appeals determined factual issues in direct contradiction of the trial court. For example, the court of appeals held without any factual basis:

> The record shows that if the price had gone down, the growers would have held Plains obligated to buy their cotton. 539 F.2d at 1253. Appendix C at page 93a.

The district court found however that the delay in acceptance of the growers' offers was such ". . . as to void and make unenforceable the agreement of offer to sell on the part of the cotton farmers." General Findings of Fact ¶ 15, Appendix B at 20a-21a.

The court of appeals simply ignored many of the district court's findings. For example, the court of appeals ignored General Findings of Fact ¶¶10 and 12, Appendix B at 19a-20a, that the attachment of gradient price schedules and changes in the exclusion date constituted material alterations of the terms of the offers. Instead of examining the effect of the changes in the terms of the contract offer at the time of the purported acceptance, the court of appeals erroneously used hindsight from its vantage point three years later to determine that the farmers were not adversely affected by Plains' alterations. The issue is not whether the farmers were adversely affected by Plains' material alterations. The issue is whether the additional terms so altered the growers' offers as to prevent contract formation.

The court of appeals in this case acted arbitrarily and unreasonably in rejecting out-of-hand and without any substantial foundation many of the district court's findings of fact. The court of appeals' treatment of the factual issues is a perversion of the accepted and usual course of appellate proceedings. The growers now are in the same situation as the petitioners in *Zenith Radio Corp.* v. *Hazeltine Research, Inc.* They both faced a court of appeals which ignored the dictates of Rule 52(a) of the Federal Rules of Civil Procedure and tried factual issues as if it was a trial court. As in *Zenith Radio,* the petitioners have only one recourse—Supreme Court reversal of the court of appeals' decision. The preservation and integrity of the adjudicative and appellate process and the prevention of a miscarriage of justice merits an exercise in this case of the Supreme Court's power of supervision.

B. The Opinion of the Court of Appeals in This Case is in Direct Conflict with Opinions Rendered by Other Circuits Interpreting the Provisions of § 2-207(1) of the Uniform Commercial Code.

Petitioners are fully aware of the fact that federal courts in adjudicating cases involving the Uniform Commercial Code are interpreting questions of applicable state law. Normally, it would not be the province of this Court to interpose its views on such questions. Petitioners believe, however, that this case presents an opportunity for this Court to provide guidance to lower federal courts in a matter of great importance under the Uniform Commercial Code—the question of the proper interpretation of § 2-207 of the Code.

As set forth below, there is a conflict among the federal courts over the proper interpretation of § 2-207 (1). Each federal case that has considered § 2-207(1), including this case, has been a case of first impression. While in such circumstances the federal court is obliged to decide the issue in the manner it believes the state court would, little guidance is available for the federal courts because § 2-207(1) produced one of the most radical changes from common law. Section 2-207(1) was intended to alter the "mirror image" rule, under which no contract was formed unless the terms of the acceptance were identical to the terms of the offer. That section has been referred to as "one of the most important, subtle and difficult in the entire Code." Duesenberg & King, Sales and Bulk Transfers under the Uniform Commercial Code, (3 Bender's Uniform Commercial Code Service) § 3.03, at 3-12

(1969), *as quoted in, Dorton* v. *Collins & Aikman Corporation,* 453 F.2d at 1165.

Because of the diversity jurisdiction of the district courts, many of the cases involving § 2-207(1) will find their way into the federal system. As with the cases discussed below, common law will furnish little guidance to the federal courts. Petitioners believe that it is to no one's advantage to have the federal courts in cases of first impression imposing different interpretations on exactly the same provision now found in the statutes of 49 states. Since the purpose of the Uniform Commercial Code is to provide uniformity, the federal courts should not provide an arena in which that uniformity is lost. This case presents an opportunity to this Court to insure that that result does not occur.

The federal courts have disagreed in their interpretations of § 2-207(1). The court of appeals in this case held that Plains accepted the growers' offers but included additional terms in its acceptances which "... do not invalidate the contract." 539 F.2d at 1253, Appendix C at 93a.

The Court of Appeals for the Sixth Circuit has similarly interpreted § 2-207(1). In *Dorton* v. *Collins & Aikman Corporation,* 453 F.2d 1161 (6th Cir. 1972), the Court held that under § 2-207(1):

> . . . a contract is recognized notwithstanding the fact that an acceptance or confirmation contains terms additional to or different from those of the offer or prior agreement, provided that the offeree's intent to accept the offer is definitely expressed . . . and provided that the offeree's acceptance is not expressly conditioned on the offeror's assent to the additional or different terms. When a contract is recognized under Subsection (1), the additional terms are treated as "proposals for addition to the contract" under Subsection (2) . . . 453 F.2d at 1166. *Accord, Hohenberg Bros. Co.* v. *J. A. Killebrew,* 505 F.2d 643 (5th Cir. 1974).

Dorton and *Hohenberg Bros.* are contrary to the view of the Court of Appeals for the First Circuit which, in one of the first federal interpretations of § 2-207(1), held:

> It would be unrealistic to suppose that when an offeree replies setting out conditions that would be burdensome only to the offeror he intended to make an unconditional acceptance of the original offer, leaving it simply to the offeror's good nature whether he would assume the additional restrictions. To give the statute a practical construction we must hold that a response which states a condition materially altering the obligation solely to the disadvantage of the offeror is an "acceptance * * * expressly * * * conditional on assent to the additional * * terms." *Roto-Lith, Ltd.* v. *F. P. Bartlett & Co.,* 297 F.2d 497, 500 (1st Cir. 1962).

Roto-Lith held that an acceptance which varied the terms of the offer was a valid acceptance under § 2-207 only if the varying terms were immaterial. If the new terms proposed by the offeree were material to the offer and were solely to the disadvantage of the offeror, under *Roto-Lith,* no contract was formed unless the offeror expressly consented to the additional terms.

Roto-Lith's interpretation of § 2-207(1) has been supported as "sound" and as consistent with the purpose of § 2-207. *Uniform Commercial Code: Variation Between Offer and Acceptance Under Section 2-207,* 1962 DUKE L.J. 613, 616, 617.

> [I]t would be very unrealistic to assume that an offeree who adds new terms unilaterally burden-

some on the offeror intends to accept the offer unconditionally and to depend solely on the generosity of the offeror to assume the new restrictions. The offeror could hardly be expected to adopt such burdensome provisions if he could have an unenforceable contract on his own terms by simply ignoring or expressly rejecting the new proposals. The First Circuit prevented that unfortunate result by holding that "a response which states a condition materially altering the obligation solely to the disadvantage of the offeror is an 'acceptance . . . expressly . . . conditional on assent to the additional . . . terms,'" and thus a rejection and counteroffer. *Id.* at 616.

In *Beech Aircraft Corp.* v. *Flexible Tubing Corp.*, 270 F. Supp. 548 (D. Conn. 1967), the Court held that a confirmation which contains additional terms constitutes an acceptance unless the new terms materially alter the offer. If the new terms are material alterations of the offer, the Court held that the purported acceptance would only be a counteroffer under the UCC. *Id.* at 558.

The district court, in this case, found that the attachment of price schedules and the change in exclusion dates were material alterations of the growers' offers. A clear conflict among various federal circuits exists over the effect of such material alterations on contract formation under the provisions of § 2-207(1).

The First Circuit, following *Roto-Lith,* and presumably the Second Circuit, following *Beech Aircraft,* would hold that these material alterations in the case at bar would prevent the formation of a contract under § 2-207(1). The Fifth Circuit, following *Hohenberg,* and the Sixth Circuit, following *Dorton,* would have agreed with the Tenth Circuit's interpretation of

§ 2-207(1) to allow formation of a contract, even if the terms of the offer are at variance with the terms of the acceptance. Those circuits hold that only the additional terms proposed by the accepting offeree do not become part of the contract between the parties. This conflict over the meaning of § 2-207(1) can only be resolved by Supreme Court review of this issue.

CONCLUSION

For the foregoing reasons, the writ of certiorari should be granted.

Respectfully submitted,

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1130 - 17th Street, N.W.
Washington, D.C. 20036
Attorney for Petitioners

APPENDIX

APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-73-648-B

C. M. BRADFORD, *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, C. M. Bradford, is entitled to judgment in the amount of $34,833.31, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $1,574.68.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that C. M. Bradford have judgment against the Plains Cotton Cooperative Association in the total amount of $38,407.97 together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, C. M. Bradford, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-73-649-B

ROBERT E. ROUDEBUSH, *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, Robert E. Roudebush, is entitled to judgment in the amount of $82,343.73, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $3,636.19.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Robert E. Roudebush have judgment against the Plains Cotton Cooperative Association in the total amount of $65,979.92, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Robert E. Roudebush, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-74-17-B

KENNETH BARTLETT, et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, Kenneth Bartlett, is entitled to judgment in the amount of $39,846.83, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $2,626.62.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Kenneth Bartlett have judgment against the Plains Cotton Cooperative Association in the total amount of $42,473.45, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Kenneth Bartlett, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-74-17-B

J. O. HEFLIN, et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, J. O. Heflin, is entitled to judgment in the amount of $20,257.44, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $1,162.17.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that J. O. Heflin have judgment against the Plains Cotton Cooperative Association in the total amount of $21,419.61, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, J. O. Heflin, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-74-17-B

O. D. RILEY, et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, O. D. Riley, is entitled to judgment in the amount of $15,169.70, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $992.47.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that O. D. Riley have judgment against the Plains Cotton Cooperative Association in the total amount of $16,162.17, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, O. D. Riley, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-74-17-B

MARVIN WILLIAMS, et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, Marvin Williams, is entitled to judgment in the amount of $11,766.33, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $736.93.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Marvin Williams have judgment against the Plains Cotton Cooperative Association in the total amount of $12,503.26, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Marvin Williams, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-73-762-B

L. H. CHRISTIAN, et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, an incorporated association, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, L. H. Christian, is entitled to judgment in the amount of $15,524.47, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $890.64.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that L. H. Christian have judgment against the Plains Cotton Cooperative Association in the total amount of $16,415.11, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, L. H. Christian, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. CIV-73-762-B

LELAND CRABB, et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, an incorporated association, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, Leland Crabb, is entitled to judgment in the amount of $30,570.30, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $1,995.03.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Leland Crabb have judgment against the Plains Cotton Cooperative Association in the total amount of $32,565.33, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Leland Crabb, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. CIV-73-762-B

EMORY HAYES and HARLAN ROLLINS, d/b/a Hayes & Rollins, et al., *Plaintiffs*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, an incorporated association, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiffs, Emory Hayes and Harlan Rollins, d/b/a Hayes & Rollins, are entitled to judgment in the amount of $61,833.28, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $3,344.08.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Emory Hayes and Harlan Rollins d/b/a Hayes & Rollins have judgment against the Plains Cotton Cooperative Association in the total amount of $65,177.36, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiffs Emory Hayes and Harlin Rollins, d/b/a Hayes & Rollins have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-73-762-B

W. J. KEITH, et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, an incorporated association, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, W. J. Keith, is entitled to judgment in the amount of $34,769.74, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $2,217.64.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that W. J. Keith have judgment against the Plains Cotton Cooperative Association in the total amount of $36,987.38, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, W. J. Keith, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-73-762-B

MAX LONGLEY, et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, an incorporated association, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, Max Longley, is entitled to judgment in the amount of $10,662.38, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $734.39.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Max Longley have judgment against the Plains Cotton Cooperative Association in the total amount of $11,396.77, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Max Longley, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-73-762-B

EDD PUTNAM, et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, an incorporated association, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, Edd Putnam, is entitled to judgment in the amount of $30,691.47, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $1,700.22.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Edd Putnam have judgment against the Plains Cotton Cooperative Association in the total amount of $32,391.69, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Edd Putnam, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-73-762-B

T. J. SIMS, et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, an incorporated association, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, T. J. Sims, is entitled to Judgment in the amount of $10,627.51, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $733.73.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that T. J. Sims have judgment against the Plains Cotton Cooperative Association in the total amount of $11,361.24, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, T. J. Sims, have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. CIV-73-762-B

WILLIAM D. STEWART, JR., et al., *Plaintiff*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, an incorporated association, *Defendant*.

Judgment

The Court has filed its Findings of Fact and Conclusions of Law on this date to the effect that the plaintiff, William D. Stewart, Jr., is entitled to judgment in the amount of $38,528.13, together with interest thereon at the rate of six percent (6%) per annum to this date in the amount of $2,311.69.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that William D. Stewart, Jr., have judgment against the Plains Cotton Cooperative Association in the total amount of $40,839.82, together with interest thereon at the rate of ten percent (10%) per annum from the date of this Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, William D. Stewart, Jr., have judgment against the Plains Cotton Cooperative Association for a partial and interim attorney fee in the amount of $1,000.00 to be taxed as costs in this case.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

No. Civ. 73-762-B

EMORY HAYES and HARLAN ROLLINS
d/b/a Hayes & Rollins, et al., *Plaintiffs*,

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION, an incorporated association, *Defendant*.

Findings of Fact and Conclusions of Law

Statement of the Court

The above entitled cause and eight similar actions were filed by 19 cotton farmers who were citizens of the State of Oklahoma against the Plains Cotton Cooperative Association (PCCA), an incorporated association existing under the laws of the State of Texas, and diversity is admitted. The actions involved many different contracts, all of which are similar in nature. By agreement of the parties, the nine cases were consolidated under 42(a) Federal Rules of Civil Procedure for the purpose of trial and disposition and are as follows:

CIV-73-648-B	C. M. Bradford v. PCCA
CIV-73-649-B	Robert E. Roudebush v. PCCA
CIV-73-747-B	Harvey Holden v. PCCA
CIV-73-748-B	Marvin Smith v. PCCA
CIV-73-762-B	L. H. Christian, et al. v. PCCA
CIV-73-774-B	Raymond Gelnar v. PCCA
CIV-73-818-B	Johnny Patten v. PCCA
CIV-74-17-B	O. D. Riley, et al. v. PCCA
CIV-74-61-B	A. C. Davis v. PCCA

It was stipulated by the parties, for the purpose of trial and disposition, that the depositions taken in one case, where relevant, would apply to all cases and that the evidence and testimony presented by the defendant would apply to all of the plaintiffs' cases. That when the cases came on for trial to the Court, a jury having been waived, the plaintiffs introduced their evidence and rested, and thereafter the defendant introduced its evidence as to all plaintiffs and rested. Because of the manner in which these cases were handled, being consolidated for trial and disposition, the Court will prepare and file a General Findings of Fact and Conclusions of law as to all of the above cases and thereafter will make a separate and specific Findings of Facts as to each plaintiff.

General Findings of Fact
As To All Actions

1. That in late 1972 and early 1973 the defendant, PCCA embarked on a cotton contracting program and contacted various gin managers in southwestern Oklahoma asking said gin managers to act on its behalf and as its agents to contract for cotton to be harvested in the fall of 1973 and spring of 1974.

2. That PCCA is a cooperative marketing association with many cooperative cotton gins, each gin having many cotton farmers as members. Any farmer producing cotton was privileged to become a member of the Association without the payment of fees; that the officers and directors of defendant were experts in the field of marketing cotton whereas the cotton farmers generally were ignorant of the marketing trends, etc.

3. It was to be the duty of the gin managers to get the cotton farmer to sign a contract to sell his 1973 crop which would not be completely harvested until the spring of 1974. That each gin manager was an agent of PCCA

for the purpose of getting the contracts signed and was not the common agent for both PCCA and the cotton farmer.

4. That in January and February, 1973, PCCA began an educational program training the gin managers how to acquire for and on behalf of the defendant written contracts with the cotton farmers wherein they would sell their cotton crop to PCCA, and in this connection furnished to each gin manager a sample proposed contract, which was a photostatic copy of only the front page of the contract and was unlike the actual proposed contracts which had numerous provisions printed on the back thereof. The gin managers were also provided schedules of gradient scales which were not shown to nor explained to the farmers and of which they were totally ignorant until they received their copies of the contracts back from PCCA with said schedules attached thereto.

5. The contract was to be completed with the following information relating to the specific farmer and his farm: the crop contract number, the farmer's name, his social security number, number of acres planted the previous year, projected yield per acre as shown by the previous year's production, method of harvesting, where the cotton was to be ginned and where the cotton was to be stored after ginning. The option exclusion date was supplied by the gin manager. The Court finds that the farmer supplied or the gin manager acquired from the ASCS records all the data necessary to answer the above questions.

6. That when a cotton farmer presented himself to the gin manager to sell his cotton by contract, the data called for in paragraph 5 above was obtained by the gin manager from the farmer or from the ASCS records, and the gin manager, the agent for PCCA, advised the cotton farmer what PCCA was willing to bid for the farmer's cotton to be produced in the fall of 1973 and the spring of 1974. After obtaining the information, the gin manager called

the home office of PCCA at Lubbock, Texas, and reported the information to them as he had been directed to do.

7. That the gin manager advised the cotton farmer of the price to be paid by PCCA as to each and all of the farmers in these actions. The different prices quoted by the gin managers to the various cotton farmers involved in these actions were as follows: 925 points over loan value or 9¼ cents per pound over government loan; 1000 points or 10 cents per pound over government loan; 1150 points or 11½ cents per pound over government loan and 2400 points or 24 cents per pound over government loan. The cotton farmers understood this to mean they would receive the stated number of cents per pound above the loan value of the cotton set by the Commercial Credit Corporation, and the cotton farmer believed the quoted price represented the price for all grades and classifications of cotton made by the government in fixing its loan value.

8. That the government in order to make a loan commitment graded the farmer's cotton and the farmer understood that the government graded cotton formed the basis of the grade of his cotton for all purposes and believed the price over and above government loan was the fixed flat price he was to receive, having no knowledge of what was meant by the schedules which later were attached to each of the farmers' contracts by the officers of PCCA at Lubbock, Texas, without the plaintiffs' knowledge and consent.

9. That upon completion of the contracts by the gin manager and with the farmers' signatures thereon, within a day or so they were mailed in triplicate to PCCA at Lubbock, Texas, for approval, as the contracts were not binding upon PCCA until approved by it in its home office at Lubbock, Texas. That after they received the contracts, PCCA took 5 to 10 days before approving the contracts, and that during the period of time the price of cotton was steadily rising, and that the length of time

which passed from the date of receipt of the contracts until said contracts were approved by PCCA was unreasonable under the circumstances.

10. That upon receipt of the contracts at the Lubbock office, said contracts were substantially and materially altered by defendant's officers writing thereon "See Schedule 25 attached" (with different schedule numbers used on different contracts, specifically 25, 28, 29, 31 and 39) and by their attaching said schedules to the respective farmers' copies of the contract. These schedules provided for decreasing prices "below government loan" according to the gradation of cotton by PCCA under the schedule. That except for W. J. Keith and W. D. Stewart, Jr. the plaintiffs were wholly unaware and ignorant of such a schedule when they signed the contracts and were told by the gin managers whom they believed that the prices were the flat prices as quoted to each of them above government loan; that is, 9¼ cents, 10 cents, 11½ cents and 24 cents above government loan.

11. That when the plaintiffs made their offer to sell, they were not aware of the schedule which was later attached to and made a part of the contract at the home office of PCCA. That the attachment of the schedule by PCCA without the knowledge and consent of Plaintiffs constituted a major alteration of the contract signed by the farmer, giving PCCA the right to grade the cotton as to grade, staple and micronaire, which could devaluate the cotton far below the original fixed price which had been quoted to the farmer. Therefore, the Court finds from the clear and convincing evidence that there was never a meeting of the minds of the parties as to the full provisions of the contract and as to the price to be paid the plaintiffs for their cotton; and, therefore, the contracts are void and unenforceable.

12. That on each contract the cotton farmer agreed to pay the cost of ginning and when bailed to deliver the

cotton to the Oklahoma Cotton Co-op Compress at Altus, Oklahoma; further, that the PCCA would be obligated to buy the farmer's cotton up to March 15, 1975. PCCA then had the option of whether or not it would purchase cotton after that date and the March 15 date was cleared by the gin manager with authorities in Lubbock, Texas. That when the contract arrived in Lubbock, Texas, the PCCA authorities changed the date from March 15, 1974, to March 1, 1974, or in some instances changed the date from December 31, 1973, to March 1, 1974, which constituted a material alteration and a new offer on the part of PCCA to the cotton farmer, making the contract void and unenforceable as far as the cotton farmer was concerned.

13. That the cotton farmer never saw nor had a fair opportunity to read the backside of the contract he signed and was never made aware of the terms and conditions on the back of the contract by the gin manager, the agent of PCCA. That the failure on the part of the defendant to inform the farmer of the provisions on the backside of the set of contracts constituted and amounted to fraud upon each farmer and in and of itself voids the contract.

14. The contracts in question were printed by PCCA in its office at Lubbock, Texas, and tablets of these contracts were mailed to the various gin managers. The contracts consisted of three copies, the first copy for the PCCA, the second copy for the gin manager and the third copy for the producer. The gin manager merely witnessed the contract and mailed it on to the PCCA office in Lubbock, assuring the farmer that he would receive the price above government loan which had previously been quoted to him by the gin manager.

15. The Court finds that after the contracts were approved by PCCA, they then were returned to the gin managers without instructions to the gin managers to deliver the contracts to the respective farmers, and in this

connection the Court finds that the cotton farmers did not receive their copies of the contracts, which had been approved with modifications and limitations, until August or September, 1973, which was such a long delay as to constitute a new and separate offer on the part of PCCA, and the delay was such under the circumstances as to void and make unenforceable the agreement or offer to sell on the part of the cotton farmers. That without exception the cotton farmers began to object to the contracts as materially altered by the defendant after they were returned to plaintiffs or as soon as he knew of the alterations thereon. An arbitrator was sent to Altus, Oklahoma, to hear the farmers' complaints regarding the changes in the contracts; that no relief, however, was granted the farmers, and they soon thereafter instituted these actions to vacate, set aside and hold for naught said contracts.

16. That in early May, 1973, the government removed all restrictions on the planting of cotton for the 1973 cotton crop, which meant that cotton farmers could plant excess acreage to that set out in his proposed contract with PCCA, and before he knew of the contract alterations and delays in acceptance and delivery of the contract, he did plant excess acreage, believing that the excess acreage was not covered by the contract and, therefore, would be his to sell on the open market when harvested. PCCA took the position that the excess acreage was covered by the contract. Notwithstanding the words on the contract, "This contract shall be applicable to all cotton produced during the crop year indicated on the designated farm as described in the County ASCS records under the Farm Serial Number Shown Above," the farmer contends that the excess acreage was not included in the proposed contract. Therefore, there was never a meeting of the minds as to the effect of the excess acreage, making the contract ambiguous, void and unenforceable.

17. That PCCA concluded that there was not a meeting of the minds of the parties in that it offered to accept the

designated acreage plus 10 percent of the excess acreage leaving 90 percent of the excess acreage to the cotton farmer to sell on the open market, which action on the part of PCCA constituted a confession that there was not a meeting of the minds and thus voids the contract.

18. The cotton farmers found themselves in a desperate and frightening position when after having filed these suits to void the proposed contracts, the PCCA sent out disparaging and critical notices to all buyers of cotton and to all cotton gins in the area, stating that PCCA had bought the respective plaintiffs' cotton and anyone dealing with said cotton farmers would be doing so at their peril, thus causing plaintiffs' cotton not to be free on the market; and because of defendant's threat and intimidation, the farmers were compelled in their own interest to enter into a stipulation with reference to the harvesting and marketing of their cotton, and soon thereafter in order to harvest and market their cotton, the farmers made the following stipulation with PCCA:

"The above parties to this cause, by their respective attorneys, stipulate and agree as follows:

WHEREAS, plaintiff herein has instituted suit for declaratory judgment as to the legality of certain purported cotton contracts, and

WHEREAS, it now appears that a judicial determination cannot be obtained prior to the harvesting of the 1973-1974 cotton crop, and

WHEREAS, in order to provide for the orderly production and sale of subject cotton, the parties hereto stipulate and agree as follows:

1. Plaintiff agrees to harvest and produce all cotton alleged to be contracted to the defendant herein and agrees to gin said cotton at the gin provided in the contract or at any other gin mutually agreed upon by

the parties and to store subject cotton at the Oklahoma Cotton Co-op Compress, Altus, Oklahoma, in accordance with the alleged contract.

2. Upon the delivery of the cotton as aforesaid defendant herein agrees to pay the market price therefor for same to be paid as hereinafter set forth.

(a) If the market price at the time of delivery is less than the price provided for in the disputed contract then such price shall be paid to plaintiff and these proceedings dismissed.

(b) If the market price at time of delivery is greater than the price provided for in the disputed contract then such contract price shall be paid to plaintiff and the difference between the market price and contract price shall be paid into Court for the benefit of the prevailing party. In lieu of paying the sum aforesaid into Court, defendant may at its election furnish a current financial statement to counsel for plaintiff and the Court. In the event defendant's net worth should be reduced to two million dollars, then defendant at its initiative shall furnish a good and sufficient bond to be filed herein sufficient to assure payment of such amount to plaintiff should he be the prevailing party herein.

3. The parties hereto further agree that the filing and performance under this stipulation and agreement shall in no way affect jurisdiction or the applicable law as to the legal rights and remedies of the parties hereto."

The parties each have carried out the provisions of the stipulation in that the cotton was fully and completely harvested, ginned at the proper and designated gin, transported to the Oklahoma Cotton Co-op Compress at Altus,

Oklahoma, and the market value was then and there determined as contemplated by the parties in the stipulation.

19. The Court finds that PCCA is a large organization representing hundreds of cooperative gins and thousands of cotton farmers from east to west across the southern section of the country; that PCCA officers and managers were experts in the field of cotton marketing and knew the trends and watched the cotton market rise steadily from February, 1973, until late spring, 1974. In contrast, the cotton farmers were ignorant and had little or no experience in contracting for the future sale of his cotton, and that the bargaining power of the cotton farmer and the bargaining power of the PCCA was not equal, and the purported contracts were, therefore, unconscionable for want of equality in bargaining power.

20. The Court takes judicial knowledge that the cotton farmer owning his own land worth in excess of $300 per acre had the responsibility of preparing the land, planting, fertilizing, applying chemical treatment to eliminate crop destruction by insects; gathering, and the cost of ginning, compressing and grading which convinces the Court that the inequities between the parties constitute a lack of mutuality and require the voidance of the contract in question as unconscionable.

21. It is clearly shown by the Exhibit or Exhibits attached hereto and made a part hereof that as a general rule PCCA was paying the farmer under the disputed contract less than ½ of the market value of the cotton when marketed by the farmer under the provisions of the stipulation, which clearly constitutes an unconscionable contract when considered in light of the fact that the PCCA never at any time assumed any risk whatsoever in its purchase of the plaintiffs' cotton; that the price of cotton was continually on the rise, and the defendant only marketed approximately ¾ of its contracted cotton, retaining

¼ for the higher market price. The evidence before the Court is convincing that the defendant has made tremendous profits and there is no evidence to show that the defendant lost any money on any contract with any farmer during the year 1973, and that the cotton market was rising so strongly that at no time did the defendant have any risk whatsoever in the purchase of plaintiffs' cotton.

22. The defendant contends that it was a custom and practice that the gin manager over the years received many valuable papers including checks for the respective plaintiffs and that the receipt of the contracts in question by the gin manager was considered to be receipt by the respective plaintiffs. The Court finds that during no previous year had the parties entered into a contract for the sale of cotton and that custom and practice did not apply to a contract that had to be timely accepted and delivered to the plaintiff, and therefore, the custom and practice claimed by the defendant is without merit.

23. The Court finds that the gin maintained a buying and selling agent, generally the bookkeeper or clerk, to buy and sell cotton on the market for buyers and the cotton producing farmers in the area. The stipulation between the parties provided for the timely establishment of the market price of the cotton on the day title passed from the farmer to PCCA. That the agent maintained a substantial bank account with authority to pay cash for cotton at the daily market price after clearing said purchase or sale with the farmer and the principal. That the market price determined by the gin agent was true, accurate and reliable, and the agent's determination of the market value of the cotton on the day title was passed to PCCA forms the basis for the judgment hereinafter rendered by the Court.

The defendant contends by its Exhibit C that the daily spot cotton quotations accurately establish the market price on the day of delivery of the cotton by the farmer to PCCA

and the passing of title to the PCCA. The Court, however, finds that the spot cotton quotations are not accurate and are without merit in establishing the market price of cotton on the day of delivery and in fact are nothing more than estimates of the cotton market.

24. That none of the plaintiffs would have signed any of the contracts had they known the defendant was going to change the contracts by adding the words, "See Schedule —— Attached" (various schedule numbers); had they known the defendant would alter the option exclusion date from March 15, 1974, to March 1, 1974, etc.; had they known the acceptance date would be unreasonably late; or had they known the return to them of their contracts, changed as they were, would be unreasonably late. Certainly there was not a meeting of the minds between the parties herein.

25. The Court finds that plaintiffs are entitled to judgment for the maket price of the cotton on the date of delivery of the cotton to PCCA less any amount paid plaintiffs by defendant under the disputed contracts, together with interest on such amount at the rate of 6 percent per annum from the date of the last delivery and passing of title to the date hereof. That PCCA will suffer no detriment other than the payment to the rightful owner of the money from the cotton produced by plaintiffs and delivered to the defendant under the stipulation between the parties.

Conclusions of Law

1. MUTUAL CONSENT ABSENT.

15 Okla. Stat. 66

2. ACCEPTANCE WAS NOT ACCORDING TO STATUTE.

15 Okla. Stat. 68

3. THE ACCEPTANCE WAS NOT ABSOLUTE.

15 Okla. Stat. 71 provides:

> "An acceptance must be absolute and unqualified, or must include itself an acceptance of that character which the proposer can separate from the rest and which will include the person accepting. A qualified acceptance is a new proposal."

In the case of *Maddox* v. *Northern Natural Gas Company*, 259 F. Supp. 783, Judge Daugherty in his opinion states:

> "To constitute a contract, there must be an offer by one party and acceptance by the other party. (Hartzell v. Choctaw Lumber Company of Delaware, 163 Okla. 240, 22 P.2d 387.) In order that a contract made be valid, it is essential that the minds of the parties meet upon all of the essential elements of the contract sought to be enforced, and the acts to be done must be clear and unambiguous. Frazier v. Powell, 169 Okl. 537, 37 P.2d 920 (1934); Cloud v. Winn (Okl. 1956), 303 P.2d 305. In order that an offer and acceptance may result in a binding contract, the acceptance must be absolute, unconditional, and identical with the terms of the offer, and must in every respect meet and correspond with the offer; and any qualification of or departure from those terms invalidates and rejects the offer. Hartzell v. Choctaw Lumber Co. of Delaware et al., supra; Nabob Oil Co. v. Bay State Oil and Gas Co., 208 Okl. 296, 255 P.2d 513 (1953). Where a person offers to do a definite thing, and another accepts conditionally, or introduces a new term into the acceptance, his answer is a mere expression of willingness to treat, or it is a counter proposal, and in neither case is there an agreement. Kingfisher Mill & Elevator Co. v. Westbrook, 79 Okl. 188, 192 P. 209 (1920)."

4. REASONABLE TIME FOR ACCEPTANCE.

Truscon Steel Company v. *Cooke,* 98 F.2d 905 (1938)

5. MATERIAL ALTERATION OF AN OFFER IS A COUNTER-OFFER.

Anderson v. *Garrison,* 402 P.2d 873 (Okla.)

6. ALTERATION OF THE DATE OF PERFORMANCE VITIATES THE CONTRACT AS A MATERIAL ALTERATION.

Richardson v. *Fellner,* 60 P. 270 (Okla.); *Citizens State Bank of Ramona* v. *Grant,* 152 P. 1082 (Okla.)

7. THE CONTRACT LACKED MUTUALITY, WAS WEIGHTED, AND UNCONSCIONABLE, AND DEFENDANT'S SUPERIOR AND EXCLUSIVE KNOWLEDGE OF THE SUBJECT MATTER PREVENTED MUTUALITY.

18 ALR 3d 1305

8. ATTORNEY FEES TAXED AS COSTS IN ACTIONS ON CERTAIN ACCOUNTS, BILLS AND CONTRACTS.

12 Okla. Stat. 936:

> "In any civil action to recover on an open account • • • or contract relating to the purchase or sale of goods, wares, or merchandise, • • • unless otherwise provided by law or the contract which is the subject to the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs."

Specific Findings of Fact
As To C. M. Bradford

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff C. M. Bradford appearing in person and through his attorney, Bob R. Scarbrough, Altus, Oklahoma, and the defendant

appearing through its attorneys, Burck Bailey, Oklahoma City and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant General Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on April 3, 1973, was advised by Mr. Eldes Huckabee, manager of the Farmers Cooperative Gin at Eldorado, Oklahoma, the agent, servant and employee of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 1150 points or 11 ½ cents per pound above government loan, and on April 4, 1973, plaintiff went to the Farmers Cooperative Gin and was advised by Mr. Huckabee that the price of 11½ cents over government loan was still in effect. Thereafter, plaintiff offered to sell his 1973 cotton crop at that price. That plaintiff executed Contracts Nos. 6310, 6311, 6312 and 6313 which were drafted by PCCA. The four proposed contracts each had printed on them the words "Schedule No. ——" and in each contract the number 31 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton at a flat 11½ cents above government loan value, which loan value was to be established by the government after it graded the cotton. The contracts were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of all four contracts were mailed to PCCA at their Lubbock office for acceptance and approval.

2. That upon receipt of the four contracts at the Lubbock office, the contracts were checked and the words, "See Schedule 31 Attached" were written into the contract without the consent or knowledge of the plaintiff. The "Schedule 31" provided for a down grading scale reflecting a price of from 11½ cents per pound down to 3 cents per pound and was only attached to plaintiff's copy of the con-

tract, which constituted a substantial change in plaintiff's offer.

3. Plaintiff signed each of the four contracts on April 4, 1973, and on April 16, 1973, the defendant signed each of the four contracts, a total of 12 days later, which the Court finds to be an unreasonable length of time under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the four contracts to Mr. Huckabee, the gin manager of Farmers Cooperative Gin, Eldorado, Oklahoma, but the evidence is clear that the contract proposals were not returned to the plaintiff nor did he have knowledge of defendant's acceptance until September 7, 1973, which was not within a reasonable period of time. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Plaintiff instituted this action on September 13, 1973, declaring said contracts to be void and unenforceable. That the attachment of Schedule 31 to the contract did materially alter the contract, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excess acreage.

7. The Court finds that PCCA did not change the contracts as to the date the defendant would exercise its option to buy plaintiff's cotton, and the general finding in this regard does not apply to this plaintiff.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering

the contracts to the plaintiff that it was so grossly negligent as to commit fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows as to each contract the delivery dates of the cotton, the number of bales delivered, the number of pounds produced, the disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due the plaintiff for his cotton. The following schedule shows the method of determining the true amount due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6312	$10,645.94	$ 4,687.34	$ 5,958.60
6313	25,615.22	11,929.63	13,685.59
6310	12,473.77	5,728.25	6,745.52
6311	15,813.13	7,369.52	8,443.61
	$64,548.05	$29,714.74	$34,833.31

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $34,833.31, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $34,833.31 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $34,833.31.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ Luther Bohanon
United States District Judge

Specific Findings of Fact
As To Robert E. Roudebush

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, Robert E. Roudebush, appearing in person and through his attorney, Larry M. Weber, Altus, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant general Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on July 31, 1973, was advised by Mr. Lloyd Briscoe, manager of the Farmers Union Coop Gin, Humphrey, Oklahoma, the agent, servant and employee of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 2400 points or 24 cents per pound above government loan, and on that date while in the gin and based upon the statement made to the plaintiff by Mr. Briscoe for the payment of 24 cents per pound above government loan the plaintiff executed the proposal to sell his 1973 cotton to the defendant. The plaintiff executed five contracts, Nos. 6487, 6488, 6489, 6490 and 6491 which contracts each had printed on them the words "Schedule No. ——" and in each contract the number 39 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton at a flat 24 cents above government loan value, which loan value was to be established by the government after it graded the cotton. The contracts were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of all five contracts were mailed to PCCA at their Lubbock office for acceptance and approval.

2. That upon receipt of the five contracts at the Lubbock office, the contracts were checked and the words, "See

Schedule 39 Attached'' were written into the contract without the consent or knowledge of the plaintiff. The ''Schedule 39'' provided for a down grading scale reflecting a price of from 24 cents per pound down to 10 cents per pound and was only attached to plaintiff's copy of the contract, which constituted a substantial change in plaintiff's offer.

3. Plaintiff signed each of the five contracts on July 31, 1973, and on August 7, 1973, the defendant signed each of the five contracts, a total of 8 days later, which the Court finds to be an unreasonable length of time under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the five contracts to Mr. Briscoe, the gin manager of Farmers Union Coop Gin, Humphrey, Oklahoma, but the evidence is clear that the five contract proposals were not returned to the plaintiff nor did he have knowledge of defendant's acceptance until September 7, 1973, which was not within a reasonable period of time. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Plaintiff instituted this action on September 13, 1973, declaring said contracts to be void and unenforceable. That the attachment of ''Schedule 39'' to the contract did materially alter the contract, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. That the contracts herein were altered by the defendant at its Lubbock office by striking through the option exclusion date of December 31, 1973, and inserting the date of March 1, 1974, which constitutes a material alteration of the contracts.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows as to each of the five contracts the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amount due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6487	$18,940.13	$17,727.75	$ 1,212.38
6488	40,244.57	28,760.26	11,484.31
6489	13,958.67	7,312.64	6,646.03
6490	22,600.84	14,921.99	7,678.85
6491	78,011.55	42,689.39	35,322.16
	$173,755.76	$111,412.03	$62,343.73

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiff's cotton crop was

concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $62,-343.73, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $62,343.73 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $62,343.73.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

Specific Findings of Fact
As To Kenneth Bartlett

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, Kenneth Bartlett, appearing in person and through his attorney, William M. Fancher, Hollis, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City, and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant general Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on March 24, 1973, was advised by Mr. Jim Darnell, manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, and by his clerk, Uvelda Wilhelm, the agents, servants and employees of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 1150 points or 11½ cents per pound above government loan. Thereafter, on the same day, plaintiff offered to sell his 1973 cotton crop at that price. That plaintiff executed Contracts Nos. 6135 and 6136 which were drafted by PCCA. The two proposed contracts each had printed on them the words "Schedule No. ——" and in each contract the number 31 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton at a flat 11½ cents above government loan value, which loan value was to be established by the government after it graded the cotton. The contracts were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of the two contracts were mailed to PCCA at their Lubbock, Texas, office for acceptance and approval.

2. That upon receipt of the two contracts at the Lubbock office, the contracts were checked and the words, "See

Schedule 31 Attached" were written into the contracts without the consent or knowledge of the plaintiff. The "Schedule 31" provided for a down grading scale reflecting a price of from 11½ cents per pound down to 3 cents per pound and was only attached to plaintiff's copy of the contract, which constituted a substantial change in plaintiff's offer and voided the contract and constituted a new offer.

3. Plaintiff signed the two contracts on March 24, 1973, and the defendant signed the contracts on April 5, 1973, a total of 11 days later, which the Court finds to be unreasonable under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the two contracts to Mr. Darnell, the gin manager, but the evidence is clear that the two contract proposals were not returned to the plaintiff nor did he have knowledge of defendant's acceptance until May 9, 1973, and did not discover the defendant's alterations thereon until September, 1973. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Immediately after plaintiff concluded that defendant would not make proper adjustments regarding the contracts, he instituted this action declaring said contracts to be void and unenforceable. That the attachment of "Schedule 31" to the contracts did materially alter the contracts, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. That the contracts herein were altered by the defendant at its Lubbock office by striking through the option exclusion date of March 15, 1973, and inserting the date of March 1, 1973, which constitutes a material alteration of the contracts.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows as to each of the two contracts the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due the plaintiff for his cotton. The following schedule shows the method of determining the true amount due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6135	$22,365.63	$ 9,128.23	$13,237.60
6136	47,096.86	20,487.43	26,609.43
	$69,462.49	$29,615.66	$639,846.83

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $39,-

846.83, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $39,846.83 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $39,846.83.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market price of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

Specific Findings of Fact
As To J. O. Heflin

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, J. O. Heflin, appearing in person and through his attorney, William M. Fancher, Hollis, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City, and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant general Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on March 24, 1973, was advised by Mr. Jim Darnell, manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, and by his clerk, Uvelda Wilhelm, the agents, servants and employees of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 1150 points or 11½ cents per pound above government loan. Thereafter, on that same day, plaintiff offered to sell his 1973 cotton crop at that price. That plaintiff executed Contracts Nos. 6130 and 6131 which were drafted by PCCA. The two proposed contracts each had printed on them the words "Schedule No. ——" and in each contract the number 31 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton at a flat 11½ cents above government loan value, which was to be established by the government after it graded the cotton. The contracts were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of the two contracts were mailed to PCCA at their Lubbock, Texas, office for acceptance and approval.

2. That upon receipt of the two contracts at the Lubbock office, the contracts were checked and the words, "See

Schedule 31 Attached" were written into the contracts without the consent or knowledge of the plaintiff. The "Schedule 31" provided for a down grading scale reflecting a price of from 11½ cents per pound down to 3 cents per pound and was only attached to plaintiff's copy of the contract, which constituted a substantial change in plaintiff's offer and voided the contract and constituted a new offer.

3. Plaintiff signed the two contracts on March 24, 1973, and the defendant signed the contracts on April 5, 1973, a total of 12 days later, which the Court finds to be unreasonable under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the two contracts to Mr. Darnell, the gin manager, but the evidence is clear that the two contract proposals were not returned to the plaintiff nor did he have knowledge of defendant's acceptance until May 9, 1973, and did not discover the defendant's alterations thereon until September, 1973. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Immediately after plaintiff concluded that defendant would not make proper adjustments regarding the contracts, he instituted this action declaring said contracts to be void and unenforceable. That the attachment of "Schedule 31" to the contracts did materially alter the contracts, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. That the contracts herein were altered by the defendant at its Lubbock office by striking through the option exclusion date of March 15, 1973, and inserting the date of March 1, 1973, which constitutes a material alteration of the contracts.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows as to each of the two contracts the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amount due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6130	$15,361.11	$ 7,203.06	$ 8,158.05
6131	25,104.27	13,004.88	12,099.39
	$40,465.38	$20,207.94	$20,257.44

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipula-

tion of the parties, and PCCA retained the sum of $20,-257.44, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $20,257.44 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $20,257.44.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ Luther Bohanon
United States District Judge

Specific Findings of Fact
As To O. D. Riley

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, O. D. Riley, appearing in person and through his attorney, William M. Fancher, Hollis, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City, and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant General Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on March 23, 1973, was advised by Mr. Jim Darnell, the manager of the Harmon County Farmers Coop Gin Association, Hollis, Oklahoma, and by his clerk, Uvelda Wilhelm, the agent, servant and employee of PCCA that defendant was in the market to buy the 1973 cotton crop. That the gin manager, on that day, while Mr. Riley was in his office advised the plaintiff that the current contract price was 1150 points above government loan. Plaintiff again contacted the gin manager on or about April 5, 1973, and on this occasion plaintiff was also advised that the current contract price was 1150 points or 11½ cents above government loan. That on March 19, 1973, and March 29, 1973, the respective contracts were signed by plaintiff. The two proposed contracts each had the words "Schedule No. ——" on them, and on both of the contracts the number 31 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton under the respective contracts at a flat 11½ cents above government loan value, which loan value was to be established by the government after it graded the cotton. The contracts, Nos. 6123 and 6321, were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of the two contracts were mailed to PCCA at their Lubbock office for acceptance and approval.

2. That upon receipt of the two contracts at the Lubbock office, the contracts were checked and the words, "See Schedule 31 Attached" were written into the respective contracts without the consent or knowledge of the plaintiff. "Schedule 31" provided for a down grading scale reflecting a price of from 11½ cents per pound down to 3 cents per pound and was only attached to plaintiff's copy of the contract, which constituted a substantial change in plaintiff's offer and voided the contract and in fact constituted a new offer.

3. Plaintiff signed the two contracts respectively on March 23, 1973 and April 5, 1973, and on April 6, 1973 and April 16, 1973, the defendant signed the respective contracts, a total of 14 days and 11 days later respectively, which the Court finds to be an unreasonable length of time under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the two contracts to Jim Darnell, the gin manager, but the evidence is clear that the two contract proposals were not returned to the plaintiff nor did he have knowledge of defendant's acceptance until the latter part of May or June, 1973, which was not within a reasonable period of time. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Immediately after plaintiff discovered the alterations in the contracts and concluded that defendant would not make proper adjustments regarding the contracts, he instituted this action declaring said contracts to be void and unenforceable. That the attachment of "Schedule 31" to the contracts did materially alter the contracts, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. That the contracts herein were altered by the defendant at its Lubbock office by striking through the option exclusion date of March 15, 1973, and inserting the date of March 1, 1973, which constitutes a material alteration of the contracts.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows as to each of the two contracts the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amount due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6123	$17,680.03	$ 7,911.32	$ 9,768.71
6321	10,189.53	4,788.54	5,400.99
	$27,869.56	$12,699.86	$15,169.70

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on

the rise; that PCCA, as the expert, never committed itself to any risk or hazard as far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $15,169.70, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $15,169.70 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $15,169.70.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

Specific Findings of Fact
As To Marvin Williams

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, Marvin Williams, appearing in person and through his attorney, William M. Fancher, Hollis, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City, and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant General Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on March 15, 1973, was advised by Mr. Jim Darnell, manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, and by his clerk, Uvelda Wilhelm, the agents, servants and employees of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 925 points or 9¼ cents per pound above government loan. Thereafter, on that same day, plaintiff offered to sell his 1973 cotton crop at that price. That plaintiff executed Contract No. 6045 which was drafted by PCCA. The proposed contract had printed on it the words "Schedule No. ——" and the number 25 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton at a flat 9¼ cents above government loan value, which loan value was to be established by the government after it graded the cotton. The contract was signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of the contract were mailed to PCCA at their Lubbock, Texas, office for acceptance and approval.

2. That upon receipt of the contract at the Lubbock office, the contract was checked and the words, "See Schedule 25 Attached" were written into the contract without the consent or knowledge of the plaintiff. The "Schedule 25" pro-

vided for a down grading scale reflecting a price of from 9¼ cents per pound down to 3 cents per pound and was only attached to plaintiff's copy of the contract, which constituted a substantial change in plaintiff's offer and voided the contract and constituted a new offer.

3. Plaintiff signed the contract on March 15, 1973, and the defendant signed the contract on March 27, 1973, a total of 12 days later, which the Court finds to be unreasonable under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the contract to Mr. Darnell, the gin manager, but the evidence is clear that the contract proposal was not returned to the plaintiff nor did he have knowledge of defendant's acceptance until May 9, 1973, and did not discover the defendant's alterations thereon until September, 1973. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Immediately after the plaintiff concluded that defendant would not make proper adjustments regarding the contract, he instituted this action declaring said contract to be void and unenforceable. That the attachment of "Schedule 25" to the contract did materially alter the contract, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contract to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excessive acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. That the contract herein was altered by the defendant at its Lubbock office by striking through the option exclu-

sion date of March 15, 1973, and inserting the date of March 1, 1973, which constitutes a material alteration of the contract.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, the disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amount due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6045	$19,527.84	$7,761.51	$11,766.33

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $11,766.33, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $11,766.33 would in law and in equity be un-

conscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $11,766.33.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

Specific Findings of Fact
As To L. H. Christian

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, L. H. Christian, appearing in person and through his attorney, Tal Oden, Altus, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City, and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant general Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on March 29, 1973, was advised by Mr. Jim Darnell, manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, and by his clerk, Uvelda Wilhelm, the agents, servants and employees of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 1150 points or 11½ cents per pound above government loan. Thereafter, on that same day, plaintiff offered to sell his 1973 cotton crop at that price. That plaintiff executed Contracts Nos. 6233 and 6234 which were drafted by PCCA. The two proposed contracts each had printed on them the words "Schedule No. ——" and in each contract the number 31 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton at a flat 11½ cents above government loan value which loan value was to be established by the government after it graded the cotton. The contracts were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of the two contracts were mailed to PCCA at their Lubbock, Texas, office for acceptance and approval.

2. That upon receipt of the two contracts at the Lubbock office, the contracts were checked and the words, "See

Schedule 31 Attached" were written into the contracts without the consent or knowledge of the plaintiff. The "Schedule 31" provided for a down grading scale reflecting a price of from 11½ cents per pound down to 3 cents per pound and was only attached to plaintiff's copy of the contract, which constituted a substantial change in plaintiff's offer and voided the contract and constitnted a new offer.

3. Plaintiff signed the two contracts on March 29, 1973, and the defendant signed the contracts on April 10, 1973, a total of 13 days later, which the Court finds to be unreasonable under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the two contracts to Mr. Darnell, the gin manager, but the evidence is clear that the two contract proposals were not returned to the plaintiff nor did he have knowledge of defendant's acceptance until May 7, 1973, and did not discover the defendant's alterations thereon until August, 1973. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Immediately after plaintiff concluded that defendant would not make proper adjustments regarding the contracts, he instituted this action declaring said contracts to be void and unenforceable. That the attachment of "Schedule 31" to the contracts did materially alter the contracts, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. That the contracts herein were altered by the defendant at its Lubbock office by striking through the option exclusion date of March 16, 1973, and inserting the date of March 1, 1973, which constitutes a material alteration of the contracts.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows as to each of the two contracts the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, the disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amounts due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6233	$27,473.23	$12,700.40	$14,772.83
6234	1,473.53	721.89	751.64
	$28,946.76	$13,422.29	$15,524.47

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the

sum of $15,524.47, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $15,524.47 would in law and equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $15,524.47.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ Luther Bohanon
United States District Judge

Specific Findings of Fact
As To Leland Crabb

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, Leland Crabb, appearing in person and through his attorney, Tal Oden, Altus, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City, and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant general Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on March 26, 1973, was advised by Mr. Jim Darnell, manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, and by his clerk, Uvelda Wilhelm, the agents, servants and employees of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 1150 points or 11½ cents per pound above government loan. Thereafter, on that same day, plaintiff offered to sell his 1973 cotton crop at that price. That plaintiff executed Contracts Nos. 6157, 6158, 6159 and 6160, which were drafted by PCCA. The four proposed contracts each had printed on them the words "Schedule No. ——" and in each contract the number 31 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton at a flat 11½ cents above government loan value, which loan value was to be established by the government after it graded the cotton. The contracts were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of all four contracts were mailed to PCCA at their Lubbock office for acceptance and approval.

2. That upon receipt of the four contracts at Lubbock, the contracts were checked and the words, "See Schedule

31 Attached" were written into the contracts without the consent or knowledge of the plaintiff. The "Schedule 31" herein provided for a down grading scale reflecting a price of from 11½ cents per pound down to 3 cents per pound and was only attached to plaintiff's copy of the contract, which constituted a substantial change in plaintiff's offer and voided the contract and constituted a new offer.

3. Plaintiff signed the four contracts on March 26, 1973, and the defendant signed the contracts on April 10, 1973, a total of 15 days later, which the Court finds to be an unreasonable time under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when defendant returned the four contracts to Mr. Darnell, the gin manager, but the evidence is clear that the two contract proposals were not returned to the plaintiff nor did he have knowledge of defendant's acceptance until May 5, 1973, and did not discover the defendant's alterations thereon until August, 1973. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Immediately after plaintiff concluded that defendant would not make proper adjustments regarding the contracts, he instituted this action declaring said contracts to be void and unenforceable. That the attachment of "Schedule 31" to the contracts did materially alter the contracts, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. That the contracts herein were altered by the defendant at its Lubbock office by striking through the option exclusion date of March 15, 1973 and inserting the date of March 1, 1973, which constitutes a material alteration of the contracts.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows as to each of the two contracts the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, the disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amounts due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6157	$1,123.65	$ 546.91	$ 546.74
6158	9,559.22	4,498.06	5,061.16
6159	33,670.39	15,013.68	18,656.71
6160	11,334.74	5,059.05	6,275.69
	$55,688.00	$25,117.70	$30,570.30

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was

never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $30,570.30, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $30,570.30 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $30,570.30.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

Specific Findings of Fact
As To Hayes and Rollins

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiffs Emory Hayes and Harlan Rollins, d/b/a Hayes & Rollins appearing in person and through their attorney, Tal Oden, Altus, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant General Findings as a supplement to these Findings and as a part hereof.

1. That plaintiffs contacted Mr. Jim Darnell, the manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, on or about the 16th day of March, 1973, concerning the cotton contracting program of the defendant. That the gin manager, on March 16, while Hayes and Rollins were in his office, called PCCA at its office in Lubbock, Texas, and advised the plaintiffs that the current contract price was 1000 points above government loan or 10 cents per pound above government loan. Plaintiffs again contacted the gin manager on or about March 24, 1973, wherein another telephone call was made to the defendant at its office in Lubbock, Texas, and on this occasion plaintiffs were advised that the current contract price was 1150 points or 11½ cents above government loan. That the telephone call referred to above on or about March 16, 1973, was in reference to plaintiffs' Contract No. 6048, and the telephone call on or about March 24, 1973, was in reference to plaintiffs' Contracts Nos. 6132, 6133 and 6134. That on March 16, 1973, and March 24, 1973, the respective contracts were signed by the plaintiffs. The proposed contracts each had printed on them the words "Schedule No. ——" and on Contract No. 6048 the number 28 was written in the blank and on Contracts Nos. 6132, 6133 and 6134 the number 31 was

written in the blank, which meant nothing to the plaintiffs as they had never seen the schedule and knew nothing about it. What they did know was that they proposed to sell their cotton under the respective contracts at a flat 10 cents and 11½ cents above government loan value, which loan value was to be established by the government after it graded the cotton. The contracts were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of the four contracts were mailed to PCCA at their Lubbock office for acceptance and approval.

2. That upon receipt of the contracts at the Lubbock office, the contracts were checked and the words, "See Schedule 28 Attached" and "See Schedule 31 Attached" were written into the respective contracts without the consent or knowledge of the plaintiffs. "Schedule 28" provided for a down grading scale reflecting a price of from 10 cents per pound down to 3 cents per pound, and "Schedule 31" provided for a down grading scale reflecting a price of from 11½ cents per pound down to 3 cents per pound and was only attached to plaintiffs' copy of the contracts, which constituted a substantial change in plaintiffs' offer and voided the contracts and in fact constituted a new offer.

3. Plaintiffs signed the contracts respectively on March 16, 1973 and March 24, 1973; and defendant signed the respective contracts on March 27, 1973 and on April 5, 1973, a total of 11 days later, which the Court finds to be an unreasonable length of time under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the contracts to Jim Darnell, the gin manager, but the evidence is clear that the contract proposals were not returned to the plaintiffs nor did they have knowledge

of defendant's acceptance until May 5, 1973, and did not discover the defendant's alterations thereon until September, 1973. Under the circumstances of the fast rising cotton market, plaintiffs' offer to sell had expired.

5. Immediately after plaintiffs concluded that defendant would not make proper adjustments regarding the contracts, they instituted this action declaring said contracts to be void and unenforceable. That the attachment of Schedule 28 and 31 to the respective contracts did materially alter the contracts, amounting to a new proposal which was not acceptable to the plaintiffs, and the delay in returning the contracts to the plaintiffs was so excessive as to result in the withdrawal on the part of the plaintiffs of their offer to sell.

6. That the plaintiffs did not take advantage of the right to plant excess acreage; consequently, paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. That the contracts herein were altered by the defendant at its Lubbock office by striking through the option exclusion date of March 15, 1973 and inserting the date of March 1, 1973, which constitutes a material alteration of the contracts.

8. The Court finds that the defendant was so slow in executing plaintiffs' proposed contracts and in delivering the contracts to the plaintiffs that it was so grossly negligent as to amount to a fraud upon the plaintiffs.

9. That Exhibit A attached hereto and made a part hereof shows as to each of the four contracts the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, the disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the

cotton and the difference between market price and the disputed contract price, which is the amount due the plaintiff for his cotton. The following schedule shows the method of determining the true amounts due the plaintiffs:

Contract Number	Gross Value	Partial Payment	Balance Due
6048	$57,725.71	$30,660.50	$27,065.21
6132	23,381.15	10,340,39	13,040.76
6133	25,124.78	12,406.14	12,718.64
6134	19,329.04	10,320.37	9,008.67
	$125,560.68	$63,727.40	$61,833.28

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiffs' cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $61,833.28, the difference between the market price and the contract price of plaintiffs' cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $61,833.28 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $61,833.28.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiffs' right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff

to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiffs' cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiffs' counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

Specific Findings of Fact
As To W. J. Keith

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, W. J. Keith, appearing in person and through his attorney, Tal Oden, Altus, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City, and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant general Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on or about March 26, 1973, contacted Mr. Jim Darnell, the manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, concerning the cotton contracting program of the defendant. That the gin manager, on March 26, while Keith was in his office, called PCCA at its office in Lubbock, Texas, and advised the plaintiff that the current contract price was 1150 points above government loan or 11½ cents per pound above government loan. Plaintiff again on April 4, 1973, contacted Mr. Darnell wherein another telephone call was made to the defendant at its office in Lubbock, Texas, and on this occasion plaintiff was also advised that the current contract price was 1150 points or 11½ cents above government loan. That the telephone call referred to above on or about March 26, 1973, was in reference to plaintiffs' Contract No. 6161, and the telephone call on or about April 4, 1973, was in reference to plaintiff's Contract No. 6307. That on March 26, 1973, and April 4, 1973, the respective contracts were signed by the plaintiff. The proposed contracts each had printed on them the words "Schedule No. ——" and on Contract No. 6161 and on Contract No. 6307 the number 31 was written in the blank. Mr. Darnell, the gin manager, in his private office explained to W. J. Keith that the schedule meant his cotton could be down graded to the point that it would only be worth 3 cents above government loan value. Thereafter, on the respective dates

above mentioned plaintiff signed the contracts in triplicate, one copy being marked PCCA copy, one gin manager's copy, and one producer's copy, and all three copies of the two contracts were mailed to PCCA at their Lubbock office for acceptance and approval.

2. That plaintiff signed the two contracts respectively on March 26, 1973, and April 4, 1973; and defendant on April 10 and April 14, 1973, signed the contracts, a total of 14 and 10 days later respectively, which the Court finds to be an unreasonable length of time under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

3. The record is not clear as to when the defendant returned the two contracts to Jim Darnell, the gin manager, but the evidence is clear that the two contract proposals were not returned to the plaintiff nor did he have knowledge of defendant's acceptance until May 15, 1973, and did not discover until September, 1973, that defendant had materially altered the contracts. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

4. Immediately after plaintiff concluded that defendant would not make proper adjustments regarding the contracts, he instituted this action declaring said contracts to be void and unenforceable. The delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

5. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

6. That upon receipt of the contracts herein at its Lubbock office, defendant altered the two contracts in that on Contract No. 6161 defendant marked out the option exclusion date of March 15, 1973, and inserted the date of March

1, 1973. That in contract No. 6307 the option exclusion date was left blank when signed by the plaintiff, but was understood by the plaintiff to be March 15, 1973. Upon receipt of this contract at the Lubbock office, defendant inserted the date of March 1, 1973, in the blank, which was not the date plaintiff had understood would be used. The changes in both instances above cited constitutes a material alteration in each of the contracts.

7. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

8. That Exhibit A attached hereto and made a part hereof shows as to each of the two contracts the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, the disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amounts due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6161	$21,642.80	$10,025.27	$11,617.53
6307	40,064.93	16,912.72	23,152.21
	$61,707.73	$26,937.99	$34,769.74

9. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $34,769.74, the difference between the market price and the contract price of the plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $34,769.74 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $34,769.74.

10. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

11. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ LUTHER BOHANON
United States District Judge

Specific Findings of Fact
As To Max Longley

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, Max Longley, appearing in person and through his attorney, Tal Oden, Altus, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City, and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant general Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on March 26, 1973, was advised by Mr. Jim Darnell, manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, and by his clerk, Uvelda Wilhelm, the agents, servants and employees of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 1150 points or 11½ cents per pound above government loan. Thereafter, on that same day, plaintiff offered to sell his 1973 cotton crop at that price. That plaintiff executed Contracts Nos. 6147, 6155 and 6156, which were drafted by PCCA. The three proposed contracts each had printed on them the words "Schedule No. ——" and in each contract the number 31 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton at a flat 11½ cents above government loan value, which loan value was to be established by the government after it graded the cotton. The contracts were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of the three contracts were mailed to PCCA at their Lubbock office for acceptance and approval.

2. That upon receipt of the three contracts at Lubbock, the contracts were checked and the words, "See Schedule 31 Attached" were written into the contracts without the

consent or knowledge of the plaintiff. The "Schedule 31" herein provided for a down grading scale reflecting a price of from 11½ cents per pound down to 3 cents per pound and was only attached to plaintiff's copy of the contract, which constituted a substantial change in plaintiff's offer and voided the contract and constituted a new offer.

3. Plaintiff signed the three contracts on March 26, 1973, and the defendant signed the contracts on April 5, 1973, a total of 10 days later, which the Court finds to be an unreasonable time under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the three contracts to Mr. Darnell, the gin manager, but the evidence is clear that the three contract proposals were not returned to the plaintiff nor did he have knowledge of defendant's acceptance until May 15, 1973, and did not discover the defendant's alterations thereon until September, 1973. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Immediately after plaintiff concluded that defendant would not make proper adjustments regarding the contracts, he instituted this action declaring said contracts to be void and unenforceable. That the attachment of "Schedule 31" to the contracts did materially alter the contracts, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. That the contracts herein were altered by the defendant at its Lubbock office by striking through the option

exclusion date of March 15, 1973, and inserting the date of March 1, 1973, which constitutes a material alteration of the contracts.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows as to each of the three contracts the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, the disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amount due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6147	$ 5,567.28	$2,556.24	$ 3,001.04
6155	10,356.26	4,580.67	5,775.59
6156	3,623.69	1,738.04	1,885.75
	$19,547.23	$8,884.95	$10,662.38

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard as far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $10,662.38, the difference between the market price

and the contract price of the plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $10,662.38 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $10,662.38.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ Luther Bohanon
United States District Judge

Specific Findings of Fact
As To Edd Putnam

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, Edd Putnam, appearing in person and through his attorney, Tal Oden, Altus, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant General Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on March 29, 1973, was advised by Mr. Jim Darnell, manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, and by his clerk, Uvelda Wilhelm, the agents, servants and employees of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 1150 points or 11½ cents per pound above government loan. Thereafter, on that same day, plaintiff offered to sell his 1973 cotton crop at that price. That plaintiff executed Contracts Nos. 6208 and 6209 which were drafted by PCCA. The two proposed contracts each had printed on them the words "Schedule No. ——" and in each contract the number 31 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton at a flat 11½ cents above government loan value which loan value was to be established by the government after it graded the cotton. The contracts were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of the two contracts were mailed to PCCA at their Lubbock, Texas, office for acceptance and approval.

2. That upon receipt of the two contracts at the Lubbock office, the contracts were checked and the words, "See Schedule 31 Attached" were written into the contracts

without the consent or knowledge of the plaintiff. The "Schedule 31" provided for a down grading scale reflecting a price of from 11½ cents per pound down to 3 cents per pound and was only attached to plaintiff's copy of the contract, which constituted a substantial change in plaintiff's offer and voided the contract and constituted a new offer.

3. Plaintiff signed the two contracts on March 29, 1973, and the defendant signed the contracts on April 10, 1973, a total of 13 days later, which the Court finds to be unreasonable under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the two contracts to Mr. Darnell, the gin manager, but the evidence is clear that the two contract proposals were not returned to the plaintiff, nor did he have knowledge of defendant's acceptance until November 1, 1973, and upon receipt he discovered the defendant's alterations thereon. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Immediately after plaintiff concluded that defendant would not make proper adjustments regarding the contracts, he instituted this action declaring said contracts to be void and unenforceable. That the attachment of "Schedule 31" to the contracts did materially alter the contracts, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. That the contracts herein were altered by the defendant at its Lubbock office by striking through the option exclusion date of March 15, 1973, and inserting the date of March 1, 1973, which constitutes a material alteration of the contracts.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows as to each of the two contracts the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, the disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amounts due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6208	$28,946.25	$13,406.98	$15,539.27
6209	27,631.02	12,478.82	15,152.20
	$56,577.27	$25,885.80	$30,691.47

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the

sum of $30,691.47, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $30,691.47 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $30,691.47.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ Luther Bohanon
United States District Judge

Specific Findings of Fact
As To T. J. Sims

This cause came on for trial on the 30th day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, T. J. Sims, appearing in person and through his attorney, Tel Oden, Altus, Oklahoma, and defendant appearing through its attorneys, Burck Bailey, Oklahoma City, and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant general Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on April 4, 1973, was advised by Mr. Jim Darnell, manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, and by his clerk, Uvelda Wilhelm, the agents, servants and employees of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 1150 points or 11½ cents per pound above government loan. Thereafter, on that same day, plaintiff offered to sell his 1973 cotton crop at that price. That plaintiff executed Contract No. 6308 which was drafted by PCCA. The proposed contract had printed on it the words "Schedule No. ——" and the number 31 was written in the blank, which meant nothing to the plaintiff as he had never seen the schedule and knew nothing about it. What he did know was that he proposed to sell his cotton at a flat 11½ cents above government loan value, which loan value was to be established by the government after it graded the cotton. The contract was signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of the contract were mailed to PCCA at their Lubbock, Texas, office for acceptance and approval.

2. That upon receipt of the contract at the Lubbock office, the contract was checked and the words, "See Schedule 31 Attached" were written into the contract without the consent or knowledge of the plaintiff. The "Schedule 31" provided for a down grading scale reflecting a price of from 11½ cents per pound down to 3 cents per pound and was only attached to plaintiff's copy of the contract, which constituted a substantial change in plaintiff's offer and voided the contract and constituted a new offer.

3. Plaintiff signed the contract on April 4, 1973, and the defendant signed the contract on April 14, 1973, a total of 10 days later, which the Court finds to be unreasonable under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

4. The record is not clear as to when the defendant returned the contract to Mr. Darnell, the gin manager, but the evidence is clear that the contract proposal was not returned to the plaintiff nor did he have knowledge of defendant's acceptance until May 9, 1973, and did not discover the defendant's alterations thereon until September, 1973. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

5. Immediately after plaintiff concluded that defendant would not make proper adjustments regarding the contract, he instituted this action declaring said contract to be void and unenforceable. That the attachment of "Schedule 31" to the contract did materially alter the contract, amounting to a new proposal which was not acceptable to the plaintiff, and the delay in returning the contract to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

6. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

7. The Court finds that PCCA did not change the contract as to the date the defendant would exercise its

option to buy plaintiff's cotton, and the general finding in this regard does not apply to this plaintiff.

8. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

9. That Exhibit A attached hereto and made a part hereof shows regarding the contract the delivery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, the disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amounts due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6308	$19,043.23	$9,315.72	$10,627.51

10. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard so far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $10,627.51, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $10,627.51 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or

expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $10,627.51.

11. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market price of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

12. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ Luther Bohanon
United States District Judge

Specific Findings of Fact
As To W. D. Stewart, Jr.

This cause came on for trial on the 2nd day of December, 1974, having been consolidated with eight other cases for trial. The case was tried to the Court with plaintiff, W. D. Stewart, Jr., appearing in person and through his attorney, Tal Oden, Altus, Oklahoma, and defendant appearing through its attorneys; Burck Bailey, Oklahoma City, and William W. Blackledge, Lubbock, Texas. The Court adopts all relevant general Findings as a supplement to these Findings and as a part hereof.

1. That plaintiff herein on March 29, 1973, was advised by Mr. Jim Darnell, manager of the Harmon County Farmers Cooperative Gin Association, Hollis, Oklahoma, and by his clerk, Uvelda Wilhelm, the agents, servants and employees of PCCA, that defendant was in the market to buy the 1973 cotton crop on the basis of 1150 points or 11½ cents per pound above government loan. Thereafter, on that same day, plaintiff offered to sell his 1973 cotton crop at that price. That plaintiff executed Contracts Nos. 6235, 6236, 6237 and 6238, which were drafted by PCCA. The four proposed contracts each had printed on them the words "Schedule No. ——" and in each contract the number 31 was written in the blank. Mr. Darnell, the gin manager, in his private office explained to Mr. Stewart that the schedule meant his cotton could be down graded to the point that it would only be worth 3 cents per pound above government loan value. Thereafter, the contracts were signed in triplicate, one copy being marked PCCA copy, one gin manager's copy and one producer's copy, and all three copies of the four contracts were mailed to PCCA at their Lubbock, Texas, office for acceptance and approval.

2. That plaintiff signed the four contracts on March 29, 1973, and the defendant signed the contracts on April 10,

1973, a total of 13 days later, which the Court finds to be unreasonable under the circumstances of the rising prices in the cotton market. The acceptance was unavailable because of the excessive length of time.

3. The record is not clear as to when the defendant returned the four contracts to Mr. Darnell, the gin manager, but the evidence is clear that the four contract proposals were not returned to the plaintiff nor did he have knowledge of defendant's acceptance until May 9, 1973, and did not discover the defendant's alterations thereon until September, 1973. Under the circumstances of the fast rising cotton market, plaintiff's offer to sell had expired.

4. Immediately after plaintiff concluded that defendant would not make proper adjustments regarding the contracts, he instituted this action declaring said contracts to be void and unenforceable. The delay in returning the contracts to the plaintiff was so excessive as to result in the withdrawal on the part of the plaintiff of his offer to sell.

5. That the plaintiff did not take advantage of the right to plant excess acreage; consequently paragraphs 16 and 17 of the General Findings of Fact herein do not apply to this plaintiff.

6. That the contracts herein were altered by the defendant at its Lubbock office by striking through the option exclusion date of March 15, 1973, and inserting the date of March 1, 1973, which constitutes a material alteration of the contracts.

7. The Court finds that the defendant was so slow in executing plaintiff's proposed contracts and in delivering the contracts to the plaintiff that it was so grossly negligent as to amount to a fraud upon the plaintiff.

8. That Exhibit A attached hereto and made a part hereof shows as to each of the two contracts the de-

livery dates of the cotton, the number of bales delivered, the number of pounds produced and delivered, the disputed contract price per pound, the market price per pound on date of delivery, the amount paid by defendant under the disputed contract, the total net market price of the cotton and the difference between market price and the disputed contract price, which is the amount due plaintiff for his cotton. The following schedule shows the method of determining the true amounts due the plaintiff:

Contract Number	Gross Value	Partial Payment	Balance Due
6235	$ 4,761.87	$ 2,521.05	$ 2,240.82
6236	28,149.55	14,748.94	13,400.61
6237	22,945.34	10,890.79	12,054.55
6238	22,846.11	12,013.96	10,832.15
	$78,702.87	$40,174.74	$38,528.13

9. The Court finds from the evidence that the market price of cotton after February, 1973, was continually on the rise; that PCCA, as the expert, never committed itself to any risk or hazard as far as the plaintiff's cotton crop was concerned. That PCCA's counter-offer was never accepted and that the cotton was marketed according to the stipulation of the parties, and PCCA retained the sum of $38,528.13, the difference between the market price and the contract price of plaintiff's cotton, and from all of the facts and circumstances in this case, to permit PCCA to retain the $38,528.13 would in law and in equity be unconscionable. Therefore, since PCCA had no risk or expense involved and no contract to purchase the cotton, the plaintiff is entitled to judgment in the amount of $38,528.13.

10. Plaintiff claims under Oklahoma statute to be entitled to have the Court assess as court costs a reasonable

attorney's fee. PCCA vigorously denies the plaintiff's right to assess attorney's fees herein. This is a suit over an alleged contract put in motion by PCCA and which was never legally accepted. Defendant has put the plaintiff to great expense and plaintiff can only recover the market value of his cotton which he could have sold on the open market had PCCA not prevented plaintiff's cotton from being free on the market by its communication to all buyers and ginners.

11. The Court finds under Oklahoma statute and under the facts in this case that the Court should assess attorney's fees. Though the attorney's work has not yet been completed, in order to put the question of attorney's fees in issue, the Court, based upon its 30 years of experience as a trial lawyer, does at this time make an interim allowance of $1,000, and if and when the Judgment herein becomes final, plaintiff's counsel may file a statement of legal services rendered, and after notice and hearing, the Court will allow a reasonable attorney's fee.

An appropriate Judgment will accordingly be entered herein.

Dated this 20th day of February, 1975.

/s/ Luther Bohanon
United States District Judge

APPENDIX C

UNITED STATES COURT OF APPEALS,
TENTH CIRCUIT.

C. M. BRADFORD et al., *Plaintiffs-Appellees,*

v.

PLAINS COTTON COOPERATIVE ASSOCIATION,
Defendant-Appellant.

Nos. 75-1217-75-1225.

Argued and Submitted Jan. 29, 1976.

Decided July 9, 1976.

Rehearing Denied Aug. 11, 1976.

• • • • • • • • • • •

BREITENSTEIN, *Circuit Judge.*

The issue in these diversity jurisdiction cases is the validity of forward contracts for the sale by the plaintiffs-appellees of cotton to the defendant-appellant. The district court gave the plaintiffs judgments against the buyer totaling over $521,000, plus interest, for cotton sold by them and a total of $19,000 for attorneys' fees. The buyer appeals. We reverse.

The plaintiffs-appellees are all farmers who raise cotton in Oklahoma. Defendant-appellant Plains Cotton Cooperative Association is a cotton marketing cooperative owned by some 20,000 farmers in Texas and Oklahoma. Its principal office is in Lubbock, Texas. In early 1973 the growers made forward contracts with the buyer covering the crop to be grown that year. After the execution of the contracts, the market price of cotton increased substantially. In the Fall of 1973 nine suits were either filed in, or removed to, the United States District Court for the Western District

of Oklahoma. Seven of these were brought by individuals; one jointly by eight growers; and one jointly by four growers. The buyer, Plains, was the defendant in each suit.

The suits sought to invalidate contracts for the sale of the 1973 cotton crop to Plains. The parties stipulated that the growers would deliver to Plains all of the cotton "alleged to be contracted" to Plains and, if at delivery, the market price exceeded the contract price, Plains would pay the difference into court for the benefit of the prevailing party. The cases were consolidated for trial to the court. After making extensive findings, the court held that the contracts were invalid for a variety of reasons. The delivery price was greater than the contract price. The court entered nineteen individual judgments, ranging from $6,200 to $65,000, plus interest, and attorneys' fees, against Plains. The cases have been consolidated for purposes of review.

I.

A forward contract, as the term is used in these cases, is a contract between a grower and a buyer whereby the grower agrees to sell cotton grown on designated acreage during a certain crop year for delivery after harvesting. Forward contracts "have become common in the American cotton marketing system." *Allenberg Cotton Co.* v. *Pittman,* 419 U.S. 20, 26, 95 S.Ct. 260, 264, 42 L.Ed.2d 195. They protect a grower against a price decline, Ibid. When the price rises, "the forward contract becomes relatively unprofitable" and the grower may have "an economic incentive • • • to breach his contract and sell the cotton elsewhere." Ibid. at n. 8. The buyer may protect himself by selling cotton "in quantities approximating the expected yield" under his purchase contracts. Ibid. Alternatively, he may protect himself "by 'hedging,' *i. e.,* offsetting his purchases with a sale of futures contracts on the cotton exchange." Ibid. at 26-27, 95 S.Ct. at 264. "The stability of

the position • • • [of the buyer] clearly depends on the integrity and enforceability of his contracts for purchase and resale." Ibid. 419 U.S. at 27, 95 S.Ct. at 264 (footnote omitted).

Sixteen of the plaintiffs-growers signed contracts in March or April, 1973, two in May, and one in July. The prices were stated in points above government loan and ranged from 9.25 cents per pound for five growers, 11.5 cents for thirteen growers, to 24 cents for one grower. Concurrently with the confirmation of the purchases Plains sold 75% of the anticipated yield and hedged the remainder.

In the late Spring and in the Summer of 1973, the price of cotton increased substantially. The growers sued to invalidate their contracts. In addition to the suits at bar, the following suits were brought, all of which held that forward contracts for the 1973 crop were valid and enforceable. *Riegel Fiber Corp.* v. *Anderson Gin Co.,* 5 Cir., 512 F.2d 784; *Hohenberg Bros. Co.* v. *Killebrew,* 5 Cir., 505 F.2d 643; *Taunton* v. *Allenberg Cotton Co.,* M.D.Ga., 378 F.Supp. 34; *Mitchell-Huntley Cotton Co., Inc.* v. *Waldrep,* N.D., Ala., 377 F.Supp. 1215; *Cone Mills Corp.* v. *Hurdle,* N.D.Miss., 369 F.Supp. 426; *Kimsey Cotton Co., Inc.* v. *Ferguson,* Ga., 233 Ga. 962, 214 S.E.2d 360; and *Harris* v. *Hine,* 232 Ga. 183, 205 S.E.2d 847.

No one acting for Plains solicited any grower to sell his cotton to Plains or induced him to do so. Plains furnished its contract forms and prices schedules to local gins. Typically, a grower would go to a gin and ask what Plains was paying for cotton. The gin employee would quote the top price on the pertinent schedule. Although frequently the growers did not examine them, the Plains schedules were available at the gins. They provided for less than top price for inferior grades of cotton. If the grower decided to sell to Plains, a gin employee would obtain the information necessary to fill out the contract forms. The price schedule

would be identified by number only. The employee would then place a telephone call to Plains at its home office in Lubbock, Texas, report the information, and inquire whether Plains would confirm the transaction. Upon Plains confirmation, the contract, executed in triplicate by the grower, would be sent to Plains. Plains would attach the pertinent schedule, execute the contract, and return to the gin a copy for the grower.

The contracts first described the cotton sold by identification of the farm and the producer, the crop year, and the total acres of farm under cultivation. Following this was a box and the words "All Cotton Produced on the Farm, OR" a specified interest therein. In the typical contract a check mark was placed in the box.

The next section of the contract contained planting information, the total farm acres of cotton, the projected yield, and other information not here pertinent. The places where the cotton was to be ginned and stored were specified.

In blanks under the heading "AGREED MARKET PRICE ADVANCE" there was written in "See schedule (followed by a number which varied from contract to contract) attached." After this was a provision that "Cotton Delivered to Compress After (a date which varied) may be Execluded from this Contract at the Option of the Association."

The contract then contained a section on "Lienholders" followed by a "Marketing Agreement" not here pertinent and under the heading "SALE AND CONVEYANCE" referred to the terms and conditions appearing on the back of the contract form and provided that the contract should be applicable to all cotton produced on the designated farm during the crop year.

At the bottom of the front page were blanks for insertion of the execution date and for the signatures of the

parties. On the back of the contract were a number of printed provisions, none of which are material to the issues now under consideration.

After stating that the gin managers were the agents of Plains and that there was unreasonable delay in the delivery of a copy of the executed contract to the grower, the trial court held that no contract was made because (1) there was no meeting of the minds, and (2) Plains materially altered the contracts. The court went on to hold that the contracts were void because they were obtained by fraud and were unconscionable.

II.

Plains attacks the holding that the gin managers were its agents. The growers came to their local gin voluntarily and without solicitation. If they wished to sell to Plains a gin employee took the necessary information, filled in the blanks, and called the Lubbock office. Without any inducement by a gin employee, the grower signed three copies and the gin sent them to Plains. In the circumstances a determination of whether the gin, or any of its employees, were agents of either Plains, or of the grower, or a common agent of both, is unnecessary.

After receipt of the contracts from the gins, Plains attached the schedule pertaining to the number appearing on the form signed by the grower. These schedules contained specific provisions relating price to quality. In some cases Plains changed the exclusion date, i. e., the date after which Plains had the option to reject the cotton. An officer of Plains executed the contract on its behalf and an executed copy for the grower was sent to the gin. The gin either delivered the contract to the grower, held it for him to pick up, or mailed it to him. The time which elapsed from the execution by the grower to the delivery of the completed contract to the grower varied from transaction to transaction. No grower is shown to have suffered any detriment

by the delay. Although Plains claims that the growers were estopped from rejecting the contracts because they waited until after Plains had acted thereon and also claims that the suits are barred by the laches of the growers, we find it unnecessary to determine these issues. The delay in contract receipt by the grower does not affect the validity of the contracts and merits no consideration.

III.

[1] The validity of the contracts must be tested by Oklahoma law. The court relied on, and erroneously cited, an old Oklahoma statute, 15 O.S. § 66, which appears in Ok.R.L.1910 § 911, and which provides that: "Consent is not mutual unless the parties all agree upon the same thing in the same sense." In 1961 Oklahoma adopted the Uniform Commercial Code, 12A O.S. § 1-101 et seq. The Code rejects the subective test of intent to contract and replaces it with mutuality of assent as manifested by the conduct of the parties.

[2] A contract for the sale of growing crops is a contract for the sale of goods within the provisions of the Code. Section 2-107(2). Code § 2-204(1) provides that:

> "A contract for the sale of goods may be made in any manner sufficient to show agreement, including conduct by both parties which recognizes the existence of such a contract."

We are not impressed with the argument of the growers that under Code § 1-103 existing law, and particularly § 66, is retained with full vitality. Section 1-103 says that certain principles of contract law apply unless displaced by particular provisions of the Code. The mutual consent requirement of § 66 has been replaced by the Code provisions relating to mutuality of assent as shown by conduct. § 2-204(1) supra.

[3] The execution of a contract by a grower was an offer to sell on the terms stated. The attachment by Plains of the price schedule with price related to quality, and the change in the exclusion date was an acceptance by Plains of the offer on additional terms. Code § 2-207(2) says that "The additional terms are to be construed as proposals for addition to the contract." Thus, the additional terms do not invalidate the contract. The non-acceptance by the growers of the additional terms becomes of importance only if (1) a grower received less than the top price for his cotton or (2) a grower is adversely affected by the change in the exclusion date. Plains contends the 95% of the cotton which it purchased went at the top price and that no one was hurt by the change in the exclusion date. We do not know whether the Plains position is right or not. The court made no findings with regard thereto and we will not make the requisite findings in the first instance.

[4] The record shows that if the price had gone down, the growers would have held Plains obligated to buy their cotton. The conduct of the parties establishes mutuality of assent to the contracts. The changes made by Plains were not alterations of the contracts but the imposition of additional terms. Because the growers did not agree to the additional terms, they may recover whatever loss, if any, they have suffered by the application of such terms.

In the contracts the description of the cotton sold read:

> "This Contract Covers all Cotton of the undersigned Producer or Producers now growing or to be grown during the 1973-1974 Crop Year, on the Designated Farm as described in the County ASCS records, * * *"

Below the foregoing, the contract contained "Planting Information." In pertinent blanks were inserted the total acres of cotton on the farm, the projected yield and other pertinent information. Plains recognized the difficulty in

estimating the number of acres which would be actually planted in cotton and allowed a 10% tolerance. The effect was that the farmer would receive the contract price on 110% of the stated cotton acreage.

[5] At the time of the execution of the contracts, the government limited the number of acres in each farm for which the farmer would receive the government production payment. In the Spring of 1973 the government removed the acreage limitation and some farmers "over planted" in excess of the contract acreage figure.

The growers urge, and the court held, that the contracts are ambiguous and void because they first cover "all" cotton produced on the farm and then state an acreage limitation. The growers say that on cotton produced from the "over plant" they are entitled to the market price at delivery rather than the contract price.

The government's lifting of the acreage restriction was not, and could not have been, foreseen and was not within the contemplation of the parties at the time of contract execution. The action of the government did not void the contracts. At the most it presents the question of the price to be paid for the cotton produced on the "over plant."

On May 4, 1973, Plains wrote its contract holders that:

> "All cotton produced on a farm under contract to PCCA must be delivered to the Marketing Association. Under no circumstances, may cotton be contracted or sold to someone else if produced on a farm which has been contracted to the Association."

Under the stipulations made after these suits were brought the growers agreed "to harvest and produce all cotton alleged to be contracted to the defendant." Plains says that it paid the market delivery price for all cotton produced from "over plant." The trial court made no finding in this regard. All that we can say on the record presented is that neither the removal of the acreage limitations nor the fact of "over plant" voided the contracts.

V.

The trial court held that the failure of Plains to inform the growers of the provisions on the back side of the contract was fraud which voided the contracts. The contracts contained the following provision which appeared just above the signature lines:

> "The terms and conditions hereon and those printed on the back of this Crop Contract, constituting this sale and conveyance, have been read and assented to by each of the parties."

[6] Plains did not deny any farmer an opportunity to read the back side and did not make any representations as to its contents. The failure of the farmers to read the back side is of no consequence. In a suit involving Oklahoma law, *Jordan* v. *Hall-Miller Drilling Co.*, 10 Cir., 203 F.2d 443, 446, we said:

> "One in possession of his faculties, being able to read, and having the opportunity to read an instrument which he signs will not be relieved therefrom merely because he did not in fact read the contract." (Footnote omitted)

The court made no findings of, and the record does not show, any false representation knowingly made with intent to deceive resulting in reliance and injury. The written statements of the court with reference to fraud are in contrast to the statements of the court at the conclusion of the trial. The court then said:

> "• • • this defendant company, they are all honorable people, very honorable. At no time did anyone ever act in bad faith."

And again:

> "But this Court finds that no one, just no one, has been dishonest. There is no fraud. I do not say that there is any fraud here at all."

We agree with the quoted oral statements. The claim of fraud is utterly without merit.

VI.

[7] The trial court held that the contracts were unconscionable and hence void. In so doing it found that the forward contracts made at or before planting time provided for payment at a price less than half of the market value of the cotton at delivery time. The increase in price has nothing to do with unconscionability. The test is the character of the contract at the time of making. See Code § 2-302. The Uniform Commercial Code Comment following this section in the Oklahoma statute says in part:

> "The basic test is whether, in the light of the general commercial background and the commercial needs of the particular trade or case, the clauses involved are so one-sided as to be unconscionable *under the circumstances existing at the time of the making of the contract.*" (Emphasis supplied.)

Nothing in the record shows that the contract prices were unfair or unconscionable at the time of contract execution. The increase in cotton prices was unexpected and unforeseeable.

The record does not show any unawareness by any grower of the market price at the time of the execution of the forward contracts or that any grower at that time thought that he was receiving an unfair price. The subsequent price increase did not make the contracts unconscionable at the time of making. The rise in price was a fortuitious circumstances beyond the control of any party.

To sustain its holding of unconscionability, the court found that Plains made "tremendous profits" on the 1973 crop. The record shows that Plains had a total gain for that period of $1,063,000 on the movement of $120,000,000 worth of cotton. A gain of less than nine-tenths of a percent is not a tremendous profit. In any event the fact of a profit or loss by Plains has no relevance to the validity of the contracts. At the trial, counsel for the growers were willing to so stipulate.

[8] The court further found that the contracts were unconscionable for want of equality in bargaining power. The trial court found that the Plains' officers were experts in cotton trends and the growers were ignorant. Nothing in the record shows that Plains knew that the price would rise. Its actions belie the charge. Plains made periodic estimates of the amount of cotton covered by its purchase contracts and currently "would sell 75% of what we thought we would get and hedge the other 25%." A witness for Plains testified that the reason for the hedge was because it was not "prudent to sell to textile mills a hundred percent of the expected production because the quantity and the quality may not be what we would have projected." He explained "hedge" as a "device, well known in agricultural commodity training [trading], of hedging a portion of our purchases of acreage by making offsetting sales of futures contracts." The immediate sale by Plains of 75% of the cotton purchased under the forward contracts dispels any inference that the expertise of Plains enabled it to foresee the future price increase. If it could have foreseen the increase, it would have held the cotton rather than selling. Plains did not speculate with the cotton which it purchased.

Cotton prices may be affected by a myriad of factors running the gamut from growing conditions, fashion trends, and governmental action to foreign policy. By signing the contracts, the growers offered to sell to Plains. There is no contention that the price was below the then

market. There is no proof that Plains solicited the contracts or induced any farmer to contract. Plains accepted the offers and concurrently sold 75% of the cotton purchased. The argument that Plains overreached the farmers is contrary both to the facts shown by the record and the conditions existing in the commodity markets which the Supreme Court, quoting from a House Report, has characterized as "a very important part of our marketing system." Allenberg, 419 U.S. at 27, 95 S.Ct. at 264.

The contracts are valid and enforceable except for the additional terms and "over plant" production mentioned herein.

VII.

[9] The court found that "under Oklahoma statute and under the facts in this case" the growers were entitled to recover attorneys' fees and awarded each of the nineteen plaintiffs $1,000 for attorneys' fees. To support its action, the court cited 12 O.S. § 936 which provides:

> "In any civil action to recover on an open account, • • • or contract relating to the purchase or sale of goods, wares, or merchandise, • • • unless otherwise provided by laws or the contract which is the subject to [of] the action, the prevailing party shall be allowed a reasonable attorney fee to be set by the court, to be taxed and collected as costs." (Footnote omitted)

In *F. D. Rich Co.* v. *Industrial Lumber Co.* 417 U.S. 116, 126, 94 S.Ct. 2157, 2163, 40 L.Ed.2d 703 the Court said that attorneys' fees "'are not ordinarily recoverable in the absence of a statute or enforceable contract providing therefor.'" (Citation omitted) See also *Alyeska Pipeline Co.* v. *Wilderness Society,* 421 U.S. 240, 95 S.Ct. 1612, 44 L.Ed.2d 141. The contracts before us do not provide for the recovery of attorneys' fees.

Woods Construction Co. v. *Atlas Chemical Industries, Inc.,* 10 Cir., 337 F.2d 888, 890, recognized § 936 and particularly its provision that an allowed attorney's fee "be taxed and collected 'as costs.'" The court held that noncompliance with the local federal court rule for the taxing of attorneys' fees as costs precluded recovery. The record before us does not disclose the local federal court rule or any compliance therewith.

Be that as it may, in *Sarkeys* v. *Haas,* Okl., 402 P.2d 894, 901, the Oklahoma Supreme Court held that under § 936 attorneys fees could not be awarded when "the plaintiff neither submitted nor attempted to submit evidence concerning the value of his attorney's services."

The growers' briefs in this court, do not attempt to sustain the award of attorneys' fees and point to no evidence of the value of the attorneys' services. The court made its awards on the basis of "its 30 years experience as a trial lawyer." The experience of the court is no substitute for the evidence which *Sarkeys* v. *Haas* requires. The award of attorneys' fees was improper.

In the consolidated appeals which are covered by this opinion, the judgments are severally reversed and each case is remanded to the district court for further proceedings in the light of this opinion.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

JULY TERM—AUGUST 11, 1976

No. 75-1217
No. 75-1218
No. 75-1219
No. 75-1220
No. 75-1221
No. 75-1222
No. 75-1223
No. 75-1224
No. 75-1225

C. M. BRADFORD, et al., *Plaintiffs-Appellees,*

vs.

PLAINS COTTON COOPERATIVE ASSOCIATION,
Defendant-Appellant.

Order

This matter comes on for consideration of the appellees' petition for rehearing filed in the captioned cause.

Upon consideration whereof, the petition for rehearing is denied.

/s/ HOWARD K. PHILLIPS
Howard K. Phillips
Clerk

Supreme Court, U. S.
FILED
DEC 9 1976
MICHAEL RODAK, JR., CLERK

In the

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-656

C. M. BRADFORD, ROBERT E. ROUDEBUSH, KENNETH BARTLETT, J. O. HEFLIN, O. D. RILEY, MARVIN WILLIAMS, L. H. CHRISTIAN, LELAND CRABB, EMORY HAYES and HARLAN ROLLINS, d/b/a HAYES and ROLLINS, W. J. KEITH, MAX LONGLEY, EDD PUTNAM, T. J. SIMS, and WILLIAM D. STEWART, JR.,

Petitioners,

VERSUS

PLAINS COTTON COOPERATIVE ASSOCIATION,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

OPINIONS BELOW

The findings and conclusions of the District Court for the Western District of Oklahoma are printed in Appendix B of the Petition, pages 15a-85a. The unanimous decision of the Court of Appeals for the Tenth Circuit is reported at 539 F.2d 1249 (10th Cir. 1976), *reh. denied*, and is printed in Appendix C to the Petition, pages 87a-99a; it will be cited herein as "Pet. App. C." Page references will be to the appendices in the Petition.

JURISDICTION

The Court of Appeals had jurisdiction under 28 U.S.C. § 1291. The judgment of the Court of Appeals was entered on July 9, 1976. The order of the Court of Appeals denying the petition for rehearing was entered on August 11, 1976. The Petition for a writ of certiorari was filed on November 9, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTION

Did the Court of Appeals err in upholding the validity of written, signed contracts between Oklahoma farmers and their marketing cooperative?

STATEMENT

Plains Cotton Cooperative Association (hereafter "Plains") is a cotton marketing cooperative with its office in Lubbock, Texas. Its primary function is to find a market for the cotton produced by its member farmers. Beginning in March, 1973, and continuing through the summer of that year, Plains entered into more than 5,000 "forward" contracts covering the cotton crop to be grown later that year. The plaintiffs—farmers residing in southwestern Oklahoma—signed their contracts from one to three months before they planted their cotton crop.[1] Later in the fall of 1973, the price of cotton increased dramatically. Plaintiffs then filed suit to have the contracts declared invalid. Some of the cases were originally filed in state court and removed

[1] One farmer (Roudebush) had already planted his crop by the time he signed the contract.

to federal court. Federal jurisdiction in all cases was established on the basis of diversity of citizenship. The nine cases (two of which have multiple plaintiffs) were consolidated for trial.

The petitioners' so-called statement of facts contains many erroneous contentions. No useful purpose is here served by a point-by-point refutation of these errors. The contracting process, in general outline, was as follows: if a farmer decided to contract his crop, he would so inform the cooperative gin manager. The gin manager (or gin bookkeeper) then obtained the necessary information from the farmer to fill out the written contract form and to telephone the farmer's agreement to contract to Plains' Lubbock office. The information provided by the farmer to the gin manager included the total acres under cultivation on the contracted farm, the farm ASCS code number, the number of acres on the farm he intended to plant in cotton, the projected yield of the cotton, the number of the price schedule setting forth the agreed market price advance, the method of harvesting the cotton, and other information of that general nature. The gin manager telephoned Plains' office in Lubbock to ascertain that the most recent price schedule received at the gin was still in effect. If so, the gin manager advised Plains that the farmer was contracting his crop on that price schedule. The farmer and the gin manager (or gin bookkeeper) then signed the written contract, which was prepared in triplicate. When the telephone call was made by the gin manager to Plains, the information regarding the farmer's name, his ASCS number, acreage, price schedule, contract number, etc., was entered by the Plains employee

on a log and the gin manager was informed that the farmer's cotton was contracted.

When the written contract was completed and signed by the farmer and the gin manager (or gin bookkeeper), the gin manager mailed all three copies of each contract to Plains' office in Lubbock. Plains had in its employ a woman and some part-time girls who checked the written contracts against the information that was on the log to confirm that what was written on the contracts conformed to the information that the Plains employee had entered on the log during the telephone conversation with the gin manager. Having confirmed the written contracts, two signed copies were mailed back to the gin where the farmer had contracted his cotton. With but a single exception, all of the farmers executed their contracts in March and April, 1973.[2] Months went by. The price of cotton climbed. It was not until late August and early September that the farmers decided they didn't want the contracts after all. It was only then that they first communicated with Plains with the hope of finding a way out other than by performance of their agreements.

Plains had contracted with foreign and domestic mills for resale of the anticipated cotton production from the contracted farms when the contracts were agreed upon by telephone. Release of the growers from their contractual commitments would have meant financial ruin for Plains.

The Court of Appeals for the Tenth Circuit held that the contracts were entirely valid, and reversed the judgment of the trial court.

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[2] Mr. Roudebush executed his contracts on July 31, 1973.

ARGUMENT

The Petition is without merit. The petitioners have not advanced or suggested any valid basis for this Court to grant a review on writ of certiorari. The considerations governing review on certiorari set forth in this Court's Rule 19 are not met. This case involves construction of contracts under Oklahoma law, nothing more. There is no conflict with the applicable Oklahoma law, nor is any such conflict suggested by petitioners. There is no federal or constitutional question involved. The decision merely holds that the contracts in issue were valid under the provisions of the Uniform Commercial Code as adopted by the Oklahoma Legislature.

There is no conflict among the decisions of the courts of appeals on the matters at issue. On the contrary, as the Court of Appeals for the Tenth Circuit points out in its opinion, every court of appeals (as well as other courts) that considered forward contracts for the sale of the 1973 cotton crop, upheld the contracts. As stated by the Court of Appeals for the Tenth Circuit herein:

> "In addition to the suits at bar, the following suits were brought, all of which held that forward contracts for the 1973 crop were valid and enforceable. Riegel Fiber Corp. v. Anderson Gin Co., 5 Cir., 512 F.2d 784; Hohenberg Bros. Co. v. Killebrew, 5 Cir., 505 F.2d 643; Taunton v. Allenberg Cotton Co., M.D. Ga., 378 F. Supp. 34; Mitchell-Huntley Cotton Co., Inc. v. Waldrep, N.D. Ala., 377 F. Supp. 1215; Cone Mills Corp. v. Hurdle, N.D., Miss., 369 F. Supp. 426; Kimsey Cotton Co., Inc. v. Ferguson, Ga., 233 Ga. 962, 214 S.E.2d 360; and Harris v. Hine, 232 Ga. 183, 205 S.E.2d 847." (Pet. App. C at 89a)

In 1973, the price of cotton increased substantially *after* the farmers had signed their respective contracts. As revealed by the citation of cases in the quote above, much litigation ensued. Although subjected to nearly every imaginable legal attack, the forward contracts involving the 1973 crop were uniformly upheld. This Court commented on forward cotton contracts in *Allenberg Cotton Co.* v. *Pittman*, 419 U.S. 20, 95 S.Ct. 260, 42 L.Ed.2d 195 (1974). The Court of Appeals for the Tenth Circuit noted this *Allenberg* commentary in its opinion herein:

> "Forward contracts 'have become common in the American cotton marketing system.' Allenberg Cotton Co. v. Pittman, 419 U.S. 20, 26, 95 S. Ct. 260, 264, 42 L.Ed.2d 195. They protect a grower against a price decline, Ibid. When the price rises, 'the forward contract becomes relatively unprofitable' and the grower may have 'an economic incentive * * * to breach his contract and sell the cotton elsewhere.' Ibid. at n. 8. The buyer may protect himself by selling cotton 'in quantities approximating the expected yield' under his purchase contracts. Ibid. Alternatively, he may protect himself 'by "hedging," i.e., offsetting his purchases with a sale of futures contracts on the cotton exchange.' Ibid. a 26-27, 95 S. Ct. at 264. 'The stability of the position * * * [of the buyer] clearly depends on the integrity and enforceability of his contracts for purchase and resale.' Ibid. 419 U.S. at 27, 95 S. Ct. at 264 (footnote omitted)." (Pet. App. C at 88a, 89a)

The petitioners complain that the Court of Appeals for the Tenth Circuit refused to adopt certain findings of fact made by the trial court. The Court of Appeals certainly did refuse to adopt certain of the trial court's findings, and quite properly so, for such findings were clearly erroneous.

Indeed, in various instances the trial court's findings were directly contrary to the only proof, completely undisputed, on the matter. As previously noted, the Petition makes allegations of fact which are simply not correct. Contrary to the Petition's blanket assertions of material changes in the offers and acceptances regarding these contracts, the undisputed fact is that various of the farmers reviewed the price schedules in detail and had their copies of the contracts hand-delivered to them months before the price of cotton went up (the price rise, of course, thereby generating "a strong economic incentive for him to breach his contract." *Allenberg Cotton Co., Inc.* v. *Pittman*, 419 U.S. at 26, n. 8).

The petitioners' specifically cited "example" of the Tenth Circuit Court of Appeals allegedly making a holding "without any factual basis," appears on page 19 of the Petition, to-wit:

> "For example, the Court of Appeals held without any factual basis:
>
> 'The record shows that if the price had gone down, the growers would have held Plains obligated to buy their cotton. 539 F.2d at 1253. Appendix C at page 93a.' "

The fact is, the record showed *exactly* what the Court of Appeals said it did. Not to be prolix about the matter, the following question and answer reveal the truth:

> "Q. (to Petitioner Riley by counsel for Plains): If the price of cotton had fallen instead of increasing like it did, you would have expected Plains to pay the contract price for your coton?
>
> A. Yes." (Tr. App. 836)

The fact is, if the price had dropped instead of rising, there would have been no lawsuits and the farmers would have expected Plains to stand muster and pay the contract price for their cotton. The record makes this quite clear.

Putting to one side the trial court's clearly erroneous factual findings, the trial court made grievous errors of law: it totally failed and refused to apply the Uniform Commercial Code which was adopted by Oklahoma some 14 years before this case came on for trial. As stated by the Court of Appeals for the Tenth Circuit:

> "The validity of the contracts must be tested by Oklahoma law. The [trial] court relied on, and erroneously cited, an old Oklahoma statute * * * In 1961 Oklahoma adopted the Uniform Commercial Code, 12A O.S. § 1-101 et seq." (Pet. App. C at 92a)

Petitioners purport to discern a difference in the construction of § 2-207 of the Uniform Commercial Code between the Tenth Circuit's decision herein, and in a case decided in 1962 by the First Circuit Court of Appeals, styled *Roto-Lith, Ltd.* v. *F. P. Bartlett & Co.*, 297 F.2d 497 (1st Cir. 1962). A review of *Roto-Lith* shows there is no conflict in the two opinions.[3] Factually, however, the two cases are not analogous. *Roto-Lith* was a breach of warranty action. The First Circuit held, under Massachusetts law,[4] that the

[3] "Its purpose [*i.e.*, § 2-207] was to modify the strict principle that a response not precisely in accordance with the offer was a rejection and a counteroffer. [Citations omitted] Now, within stated limits, a response that does not in all respects correspond with the offer constitutes an acceptance of the offer, and a counteroffer only as to the differences." *Roto-Lith, Ltd.* v. *F. P. Bartlett & Co.*, 297 F.2d 497, 500 (1st Cir. 1962).

[4] "The first question is what law the Massachusetts court would look to in order to determine the terms of the contract." *Id.* at 499.

plaintiff was bound by the disclaimer of warranties in the defendant's acknowledgment of the order.

More to the point is the fact that petitioners' reliance on this kind of argument sharply demonstrates the lack of merit in their Petition. Even assuming, *arguendo*, a difference in the interpretation of § 2-207 by the Tenth Circuit applying Oklahoma law, and the First Circuit applying Massachusetts law, such difference could not provide a basis for review on writ of certiorari. There is no federal common law and federal courts are bound to follow the controlling law of the respective states in deciding these cases, regardless of whether an interpretative "conflict" develops. As stated in *Erie Railroad Company* v. *Tomkins*, 304 U.S. 64, 82 L.Ed. 1188 (1938):

> "Except in matters governed by the Federal Constitution or by Acts of Congress, the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its Legislature in a statute or by its highest court in a decision is not a matter of federal concern. There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts." 304 U.S. at 78.

The court below sat, in effect, as an Oklahoma court, and was required to decide the case in accordance with Oklahoma law, not the law of Massachusetts or any other state.

The Court of Appeals for the Tenth Circuit correctly applied Oklahoma law to these Oklahoma contracts—there

is no contention by petitioners to the contrary. The decision of the Court of Appeals is based on Oklahoma contract law and turns on its own facts; it affects no one other than the litigants.

CONCLUSION

The Petition presents no issue warranting review by this Court. It should be denied.

Respectfully submitted,

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December, 1976

CERTIFICATE OF SERVICE

I hereby certify that the following named parties,

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required by law to be served in this case, were this day mailed copies of the foregoing Brief in Opposition, postage prepaid.

Dated: ..... , 1976.

.....
Burck Bailey
Attorney for Respondent